

No. 12772

2671

**United States
Court of Appeals**
for the Ninth Circuit.

DEAN ACHESON, as Secretary of State of the
United States of America,

Appellant,

vs.

MARIKO KUNIYUKI,

Appellee.

Transcript of Record

**Appeal from the United States District Court,
Western District of Washington,
Northern Division**

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

WIRIN, RISSMAN & OKRAND,

Attorneys for Plaintiff,

257 South Spring Street,
Los Angeles 12, California.

WILLIAM Y. MIMBU,

Attorney for Plaintiff,

318 Sixth Avenue South,
Seattle 4, Washington.

J. CHARLES DENNIS, and

JOHN E. BELCHER,

Attorneys for Defendant,

1017 U. S. Court House,
Seattle 4, Washington.

In the United States District Court, Western
District of Washington, Northern Division

No. 2560

MARIKO KUNIYUKI,

Plaintiff,

vs.

DEAN ACHESON, as Secretary of State,

Defendant.

COMPLAINT UNDER SECTION 503
UNITED STATES NATIONALITY ACT

Comes Now the plaintiff and complains of the
defendant as follows:

I.

Plaintiff is a citizen of the United States. She was born in the United States at Seattle, Washington, on July 2, 1916. She is a permanent resident of Seattle, Washington; within this judicial district; and she claims such residence as her permanent residence.

II.

The defendant is the Secretary of State of the Government of the United States. As such, he is the head of said Department.

III.

This Court has jurisdiction herein by virtue of Title 8, United States Code Section 903 (Section 503 United States Nationality Act).

IV.

In 1940 plaintiff left the United States for the purpose of visiting there temporarily; she was unable to return to the United States because of the war.

V.

Prior to the filing of this proceeding the plaintiff applied to be registered as a United States citizen at the office of the United States Consul at Japan; said United States Consul, as agent for the Department of State, and the Defendant as Secretary of State, refused to register the plaintiff on the ground that the plaintiff had lost her United States Nationality because she voted in the Japanese general elections in 1946.

VI.

The plaintiff voted in the Japanese general elections in 1946 and 1947 through mistake, confusion and misunderstanding; and additionally, because she was influenced so to do by the Headquarters of General Douglas MacArthur, and the United States Occupation Forces in Japan.

VII.

In so voting the plaintiff did not intend or expect to lose her United States nationality; and the plaintiff would not have voted had she intended or expected to lose her United States nationality by virtue of so voting.

On the contrary, the plaintiff in so voting understood and believed that she was serving the interests of the United States and was acting as a loyal citizen

of the United States, in order to bring to Japan, United States democracy.

VIII.

In 1946, Japan was not a foreign state within the meaning and intent of Section 801(e) of the United States Nationality Act (8 U. S. Code, Section 801(e)).

Wherefore, plaintiff prays for a judgment and decree adjudging her to be a citizen of the United States and entitled to all the rights and privileges of a citizen of the United States; and that the Defendant as Secretary of State, be ordered to register the plaintiff as a citizen of the United States, and to accord to the plaintiff all the rights and privileges of a citizen of the United States, and to issue to the plaintiff a passport upon application by the plaintiff; and plaintiff prays for such other and further relief as to this Court may seem just.

A. L. WIRIN, and

FRED OKRAND,

WILLIAM Y. MIMBU,

By /s/ A. L. WIRIN,

Attorneys for Plaintiff.

[Endorsed]: Filed May 25, 1950.

[Title of District Court and Cause.]

ANSWER

Comes now the defendant above named by and through J. Charles Dennis, United States Attorney for the Western District of Washington, and John E. Belcher, Assistant United States Attorney for said district, and for answer to the complaint of the plaintiff, admits, denies and alleges:

I.

Answering paragraph I, defendant denies that plaintiff is a citizen of the United States or that she is a permanent resident of Seattle, Washington.

II.

Answering paragraph II, defendant admits the same.

III.

Answering paragraph III, defendant denies the same.

IV.

Answering paragraph IV, defendant admits that plaintiff left the United States in the year 1940 and went to Japan, but denies the balance of said paragraph.

V.

Answering paragraph V, defendant admits the same.

VI.

Answering paragraph VI, defendant admits that plaintiff voted in the Japanese General Elections in

the years 1946 and 1947, but denies the other allegations contained therein.

VII.

Answering paragraph VII, defendant denies each and every allegation, matter and thing therein contained and the whole thereof.

VIII.

Answering paragraph VIII, defendant denies the same.

Wherefore, having fully answered, defendant prays that plaintiff take nothing by her complaint and that he go hence and recover his costs herein.

/s/ J. CHARLES DENNIS,
United States Attorney.

/s/ JOHN E. BELCHER,
Assistant United States
Attorney.

[Endorsed]: Filed August 21, 1950.

In the District Court of the United States for the
Western District of Washington, Northern
Division

No. 2560

MARIKO KUNIYUKI,

Plaintiff,

vs.

DEAN ACHESON, as Secretary of State,

Defendant.

August 24, 1950—10:00 o'Clock A.M.

COURT'S ORAL DECISION

The Court: The first thing to take into consideration is the jurisdiction of the Court, and I will now find that under Section 903 of Title 8 this Court has jurisdiction to hear and try this case and make a judicial determination as to whether or not the Plaintiff in this case was deprived of her citizenship by voting in the elections in Japan according to the evidence in the case.

The Section is 401 E of the Nationality Code which is 801 E and reads as follows:

“A person who is a national of the United States whether by birth or naturalization shall lose his nationality by voting in a political election in a foreign state or participating in an election or a plebiscite to determine the sovereignty over a foreign territory.”

The first clause is the one that is involved here, that is, “Voting in a political election in a foreign

state." It requires the judicial determination of several words and also some factual determination. In the first place, from the facts in the case there isn't any doubt but what the Plaintiff in the case voted, that is, she cast her ballot in two elections, at least, in Japan in the years 1946 and 1947, although the State Department by their Exhibit B rests their position upon the fact that they claim she has expatriated herself under the provisions of Section 401 E by voting in the Japanese political elections of April, 1946.

The words which require judicial construction and determination as to their meaning, there, are three, —"Political election," the word "foreign" and the word "State." Taking them in the order which they are easiest to determine, I will take the word "foreign," first. There isn't any doubt but what Japan is foreign to the United States in the sense that it is the opposite and is intended to have the opposite meaning of the word "domestic," which includes the territory of the United States. So whether Japan is or was during that period of time a foreign state or not, it nevertheless was foreign.

The question is whether or not it was a State. It is the contention of the Defendants, here, that Japan was a State. The definition, I think of the word "State," a great many text books on International Law and writers have dealt with the word for many years but actually it has not changed much since it was defined by Vattel in his French work beginning about 1773. It is continued on through Moore's Digest of International Law, Re-

vere, Hackworth and the like. I do not wish to ever be in the position of citing simply myself in my rulings but in this particular case, *U. S. versus Kusche* 56 Federal Sup. 201, the question was raised whether or not Hitler's third Reich was a State, that is to say, whether or not it was the same German State as that from which the person involved there had renounced his allegiance. I held that it was but it reviewed the elements necessary to constitute a State and come to the conclusion to which I still adhere, that is, a State comprehends a body of people living in a territory who are not subject to any external rule but who have the power within themselves to have any form of government which they choose and have the power to deal with other States. In other words, they have sovereignty. That is the first essential, I think, in a State and I think that is recognized by the cases on which the government relies—*Jones versus U. S.*, reported in 137 U. S. 202 and 212. The Court says, "Who is the sovereign, *de jure* or *de facto* of a territory is not a judicial but a political question the determination of which by the legislative and executive departments of any government conclusively binds the judges," and so forth. But the kernel of the definition as included there is sovereignty. Likewise, in the *Venustiano Carranza* case—*Octjen versus Central Leather Company*—in that case the Government of the United States acting through the regularly elected officials had officially recognized,—that is to say, the President of the United States had officially recognized the Govern-

ment of Carranza as the Government of Mexico, which is certainly quite different than the situation which has obtained here.

In an effort to determine whether or not Japan has any sovereignty and the other attributes which make for the creation or existence of a State, we refer to the Plaintiff's Exhibit 2, here, "Occupation of Japan," the official book put out by the State Department of the United States containing the text of the various documents which relate to Japan prior to the surrender and subsequent to the surrender. I don't think it is necessary to review the Potsdam Declaration, the Emperor's reply thereto and the acceptance thereof. But to start with the instrument of surrender, itself, which is found on page 62 of this document, "We"—now, that is not only the Japanese but also Douglas MacArthur who is signed here as Supreme Commander for the Allied Powers.

Incidentally, I can take judicial notice of the fact that prior to this date he had been designated the Supreme Commander of the Allied Powers by the various Allied Powers to act for and on behalf of all of them in connection with the surrender and all subsequent matters. That document is not in this book. However, it is available and it is a matter of which the Court can take judicial notice. The instrument of surrender is also signed by the United States Representative, Republic of China, The United Kingdom, Soviet Russia, Australia, Dominion of Canada, French Republic, the Netherlands and New Zealand.

Having reference to its text:

“We hereby command all Civil, Military and Naval authorities to obey and enforce all proclamations, orders and directives deemed by the Supreme Commander for the Allied Powers to be proper to effectuate this surrender and issued by him or under his authority and we do direct that all such officials to remain at their posts and to continue to perform their non-combatant duties unless specifically relieved by him or under his authority.”

Continuing, further:

“The authority of the Emperor in the Japanese Government to Rule the State shall be subject to the Supreme Commander for the Allied Powers who will take such steps as he deems proper to effectuate those terms of surrender.”

Some suggestion is made that the Far Eastern Commission supersede and supplant the Supreme Commander for the Allied Powers in the Government of Japan. But the original proposal was only that the Allied Commission should act as an advisory body and that is all it finally amounted to, actually, in the agreement which I think was effectuated at Moscow and promulgated December 27, 1945. The Far Eastern Commission is given power to formulate the policies, principles and standards. It has the power to review, on the request of any member, any directive issued to the Supreme Commander and the like, and the func-

tions of the United States Government are defined and outlined. But as I indicated to counsel during the course of the argument, there is a subdivision B to that and that is the Allied Council for Japan; and under that:

“The Supreme Commander shall issue all orders for the implementation of the Terms of Surrender.”

So that the Terms of Surrender—and I am satisfied it has been so regarded by the Supreme Commander in Japan and by the United States Government in supporting the Supreme Commander for the Allied Powers in some various disputes which have arisen with the Far Eastern Commission—were that he is the one who effectuates the instrument of surrender; and under the instrument of surrender the authority of the Emperor and the Japanese Government to rule shall be subject to the Supreme Commander for the Allied Powers and not to any Far Eastern Commission. So actually, in my judgment, and I so hold, that this agreement of the Foreign Ministers to establish the Far Eastern Commission did not take away the power of the Supreme Commander which, as I indicated, was the authority over the Emperor and the Japanese Government, entirely.

Going further in this document, we find here the document of August 29, 1945. I think it was promulgated on September 6th, 1945. On page 75 of the book, under the subject “Allied Authority,”—“Although every effort will be made, by consultation

and by constitution of appropriate advisory bodies, to establish policies for the conduct of the occupation and the control of Japan which will satisfy"—not the Japanese Government but —“the Principal Allied powers, in the event of any differences of opinion among them, the policies of the United States will govern.

“Relationship to Japanese Government.”

“The authority of the Emperor and the Japanese Government will be subject to the Supreme Commander, who will possess all powers necessary to effectuate the surrender terms, and to carry out the policies established for the conduct of the occupation and the control of Japan.”

“The Japanese Government will be permitted, under his instructions, to exercise the normal powers of government in matters of Domestic Administration.”

Mind you, it says, that they will be permitted, under his instructions. I have no idea how many directives have been issued, but I will call your attention to one or two, and that is the matter of which I can take judicial notice, that the Japanese Government is run by receiving a directive from the Supreme Commander to the Allied powers addressed to the Japanese Government and then followed, in turn, by some action on the part of the Japanese Government; or if the matter is initiated by the Japanese Government, it becomes a proposal. And when the proposal is approved it then becomes a directive.

But continuing this:

“This policy, however, will be subject to the right and duty of the Supreme Commander to require changes in Governmental machinery or personnel or to act directly if the Emperor or other Japanese authority does not satisfactorily meet the requirements of the Supreme Commander in effectuating the surrender terms. This policy, moreover, does not commit the Supreme Commander to support the Emperor or any other Japanese Governmental authority in opposition to evolutionary changes looking toward the attainment of United States objectives.”

And here is the key phrase:

“The policy is to use the existing form of government in Japan, not to support it.”

Then it goes on further suggesting the method of changes. In Part III—Political, of that directive, on page 76:

“High officials of the Japanese Imperial General Headquarters, and General Staff, other high military and naval officials of the Japanese Government, leaders of ultra-Nationalists and militarist organizations and other important exponents of militarism and aggression will be taken into custody and held for future disposition.”

There you are taking the people whom the Japanese people or the Japanese Government exercising its power as a State had selected as its officials to

run it and you are wiping them out entirely. There is certainly no evidence of independent action or sovereignty there.

Furthermore it says:

“Laws, decrees and regulations which establish discriminations on ground of race, nationality, creed or political opinion shall be abrogated; those which conflict with the objectives and policies outlined in this document shall be repealed, suspended or amended as required; and agencies charged specifically with their enforcement shall be abolished or appropriately modified. Persons unjustly confined by Japanese authority on political grounds shall be released. The judicial, legal and police systems shall be reformed as soon as practicable to conform to the policies set forth in Articles I and III”

of this document; and so forth.

The next document is important, “Economic Demilitarization.” They take away the army and navy and the air force. They were not allowed that. Furthermore, they take away the number and limit the size of ships. They were not allowed to engage in their ordinary method of banking. Over on page 79:

“To this end it shall be the policy of the Supreme Commander: (a) To prohibit the retention in or selection for places of importance in the economic field of individuals who do not

direct future Japanese economic effort solely towards peaceful ends;

and

“(b) To favor a program for the dissolution of the large industrial and banking combinations which have exercised control of a great part of Japan’s trade and industry.”

And pursuant to that, the banks were dissolved,—large corporations which had theretofore existed were dissolved. Their properties were taken and distributed to the Japanese people.

Continuing further on page 79:

“The Japanese authorities will be expected, and if necessary, directed, to maintain, develop and enforce programs that serve the following purposes”

and it sets forth some of the requirements and aims of the occupation of Japan.

Page 81,

“International Trade and Financial Relations. Japan shall be permitted eventually to resume normal trade relations with the rest of the world. During occupation and under suitable controls, Japan will be permitted to purchase from foreign countries raw materials and other goods that it may need for peaceful purposes, and to export goods to pay for approved imports.

“Control is to be maintained over all imports and exports of goods, and foreign exchange and financial transactions. Both the policies

followed in the exercise of these controls and their actual administration shall be subject to the approval and supervision of the Supreme Commander in order to make sure that they are not contrary to the policies of the occupying authorities, and in particular that all foreign purchasing powers that Japan may acquire is utilized only for essential needs.”

All Japanese property abroad was taken away. Every vestige of sovereignty, as exercised by a nation or state, was taken away. They did keep their government. As indicated in here it was to be used and not to be supported, and to be used for the purpose of carrying out the policies of the instrument of surrender and of this document which still remains the principal document of outline.

On page 88:

“Authority of General MacArthur as Supreme Commander for the Allied powers.”

And on page 89:

“The Authority of the Emperor and the Japanese Government to rule the State is subordinate to you as Supreme Commander for the Allied powers. You will exercise your authority as you deem proper to carry out your mission. Our relations with Japan do not rest on a contractual basis, but on an unconditional surrender. Since your authority is Supreme, you will not entertain any question on the part of the Japanese as to its scope.”

Here not only is a government that has no independence or has no supremacy, but they are not even allowed to question any act of the Supreme Commander for the Allied powers.

Attention must be given in this connection to Appendix 18, page 94, "Japanese 'Bill of Rights' ". You will notice there that that is a SCAP directive, October 4th, 1945. In other words, this was an order from the Supreme Commander of the Allied Powers to the Japanese Government and it deals with many, many subjects. But I will not take time to review them.

Another SCAP directive, on January 4th, 1946,
"Removal and Exclusion of Undesirable personnel from public office."

They go on—well, they just practically clean out the entire Japanese Government. I am not going to take time to review them but they start out with war criminals, career persons, and persons influential in activity in certain political association, the control associations which exercised power over the various industries in Japan, and particularly with relation to their financial and ordinary, economic business life; that is to say, the private lives of the people. Subdivision "E" of the Appendix, abolishes officers of financial and development organizations involving Japanese expansion and gives a long list, here, beginning with the "South Manchurian Railway Company" and so forth and it says,

"Any other bank, development company or

institution whose foremost purpose has been the financing of colonization and development activities in colonial and Japanese-occupied territory,"

and so forth.

And again the SCAP directive of January 4th, 1946, Appendix 21,

"Abolition of Certain Political Parties, Associations, Societies, and Other Organizations,"

and a list of organizations to be abolished.

The "Japanese Draft Constitution," Appendix 23 on page 117. It is to be noted that the draft was prepared but it was submitted by the Japanese Government to SCAP for SCAP's approval and subsequently the Supreme Commander for the Allied Powers did approve it, which is the only thing which gave it life or vitality at all.

I think that I perhaps should observe that Appendix number 25 originated with the Emperor, himself. The "Imperial Rescript denying divinity of Emperor."

Appendix 27, the order of the SCAP directive. And while that says:

"You are hereby authorized to hold a general election"

you will notice that that is entitled a directive from the Supreme Commander from the Allied powers to the Japanese Government. That is on page 136.

And General MacArthur's reply to the Far East-

ern Commission is certainly indicative of the extent to which he regarded his power to go. He says, —well, he indicates at page 138 where it refers to his purge directive, “90 percentum of the members of the present Diet, as well as many other persons holding high government office in the war administration, have been removed from government service and barred from public office or activity as officers of political parties.”

He indicates that if the election should go wrong,

“The remedy is always in my power to require the dissolution of the Diet and the holding of a new election under such provisions as are deemed necessary.”

Again he says the same thing on page 140, in his answer to the Commission’s question number 3, and the nature of the elections are indicated by his approval of the elections in Appendix number 30.

I think from what I have said that it is clear that my opinion is that Japan did not exercise any sovereignty. And whatever else it may be called, in the rather mixed up international situation as it is today, it cannot be called a foreign State within the contemplation and meaning of the terms of Section 801 E of Title 8 of the U. S. Code.

There is another word, I think, that needs definition and that is “Political Election.” In view of the fact that the election was called at the direction of General MacArthur, that all of the candidates had to be screened, and that he had the power to dissolve the Diet, called a new election and purge—

that is to say put everybody out of public office who might have been elected—it seems to me that the election held in Japan does not come within the meaning of a political election as used in 801 E. It is more in the nature of a plebiscite.

I think the words “Political Election,” as used in 801 E mean an election by which the people do not just exert or express their wish but actually exercise a command that certain people shall hold certain public office. Now, actually, what the elections were in Japan were not a command by the people, which they were capable of enforcing, that certain persons should hold certain public offices, but merely, in view of the power of the Commander to negate it, was merely the expression of a wish or, at best, merely a plebiscite. I think probably we call them “Polls” in this country today. So I don’t think that the election at which this lady voted in Japan or the elections were the type of elections that were contemplated by Section 801 E or meant by that. That disposes of that feature of the case. Before coming to the other feature of the case, I would like to say in that connection that I think I am supported in my views here, not only by the Arikawa case but the Ouyee, the Yamamoto, Brehm versus Acheson, and the Fujizawa case, all heretofore decided by various district courts.

The other question in the case is whether or not the act of the Plaintiff in voting was a voluntary act. In the first place, I am satisfied that the statute is not meant to be and was not meant by Congress to be an arbitrary deprivation of a per-

son's citizenship in the United States by doing an act which they did not know the meaning of at the time they did it. In other words, it had to be knowingly done and it had to be voluntarily done.

I don't think I would be justified, from any evidence in this case, in holding that there was any duress, that there was any physical threat upon the Plaintiff in the case, or that there was any physical threat of bodily harm or physical threat of the deprivation of her liberty, her home, her job, her food or her clothing or any other of the many various means which modern civilization and I guess ancient as well, has of hurting people physically in order to coerce them to do things. There was no question as to that at all.

The question was whether it was voluntary on her part. You have here a woman who was born in the United States, and when she was two or three years old, was taken to Japan where she lived all of her life except for eight months just prior to the commencement of war in 1941. She was taken to Japan and remained there until 1950. She was a Japanese citizen. There is no doubt but what she had dual nationality both in the United States and that as a Japanese citizen she was subject to the Japanese laws which regulated and ruled Japanese citizens. I recall, in reading one of the documents here in evidence that the directive either from SCAP or a publicity release was that all Japanese citizens should vote. Now, certainly, she was a Japanese citizen.

I think in her situation, with the fact of the great

emphasis in that election in Japan was placed upon the rather subordinate place which woman had had in the country theretofore, and the fact they were now to be given equality of rights, that she did not do a voluntary act.

I think at the time she had, as she had indicated here, admiration for the conduct of the occupation of Japan by the Supreme Commander for the Allied Powers. I do not think she would have willingly or knowingly done any act at all which might ever possibly have endangered her American citizenship.

I don't know, perhaps I would not be justified in drawing on my own personal experience in Japan, in going there after the war, but perhaps it is a matter of which we can now take judicial notice, that is, the willingness of the Japanese people generally and their anxiety to please the Supreme Commander for the Allied Powers and the occupying authorities, their great eagerness to actually learn the ways of democracy, their disappointment of having been misled for so many years in the matter of world conquest, and their avid appetite to learn and adopt Democratic ways and institutions. I notice that they rather wryly remark in one of these documents, here, that it may take some time. Of course it will. But in the meantime, certainly, I do not think that this woman should be penalized by a denial of her citizenship on the ground that she voluntarily and freely voted in that election when there was so much confusion, and that when, quite obviously, she did

not know that she would be losing her citizenship. And on that point I am constrained to hold and do hold that the Plaintiff did not voluntarily vote in the elections in Japan, which the evidence shows she did.

I think I have covered all of the points which have been raised by counsel and covered a few more. I hope I haven't raised any more than necessary.

The Plaintiff will prepare the findings of fact and conclusions of law.

(Concluded.)

[Endorsed]: Filed August 29, 1950.

[Title of District Court and Cause.]

OBJECTIONS TO PLAINTIFF'S PROPOSED FINDINGS OF FACT

Comes now the defendant in the above-entitled cause, by and through J. Charles Dennis, United States Attorney, and John E. Belcher, Assistant United States Attorney, and files these objections to the proposed findings of fact as submitted by the plaintiff herein:

1. As to Finding of Fact number I, objects to the words "She has at all times been and now is a citizen of the United States" on the ground that it is not a finding of fact but a conclusion of law.

2. Objects to portions of Finding number III,

as follows: That said paragraph should state the date when the plaintiff left the United States, the date when she returned to the United States, and the date when she again left the United States.

The evidence is clear and undisputed that she was actually in the United States only eight months.

Defendant objects to that portion of paragraph III found in lines 21 and 22 reading as follows: "and the plaintiff then intended to remain in Japan for a period of approximately nine months" on the ground that there was no evidence in the case as to what her intentions were when she left the United States in 1941.

Defendant objects to that portion of paragraph III beginning with line 26, on the ground there was no evidence introduced in the case as to whether or not the plaintiff did commit any act of disloyalty to the United States.

Defendant asks to substitute for lines 29, 30, 31 and 32 the following: "That subsequent to the War the plaintiff was employed as a maid by an officer of the Army" on the ground that this finding is misleading in that it would give a reader of the same the impression that plaintiff was a member of the Armed Forces of the United States or had something to do with the military department, whereas in truth and in fact, she was simply a servant of one of the officers.

3. Defendant objects to the last three lines of paragraph IV on the ground that the question of whether or not the plaintiff is a citizen of the

United States is a question of law and not a question of fact.

4. As to paragraph V, defendant objects to lines numbered 14, 15 and 16, reading "The plaintiff was induced so to vote by the United States Occupation Forces in Japan, and by the Headquarters of General Douglas MacArthur." Also, lines 19, 20 and 21, reading "which said items were issued by or under the direction of ***."

Also lines 23 to 27, on the ground that there was no evidence in the case to support said finding.

Also that portion commencing on line 28 and ending on line 3, page 4.

/s/ J. CHARLES DENNIS,
United States Attorney.

/s/ JOHN E. BELCHER,
Assistant United States
Attorney.

[Endorsed]: Filed September 15, 1950.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The above cause having come on regularly for trial on August 23, 1950, before the Honorable Peirson M. Hall, Judge Presiding, without a jury, no jury having been requested, the plaintiff appearing by her attorneys A. L. Wirin and Fred Okrand of Los Angeles, California, and William Y. Mambu, of Seattle, Washington, A. L. Wirin and William Y. Mambu, of Counsel, and the defendant appearing by his attorneys, J. Charles Dennis, United States Attorney, and John E. Belcher, Assistant United States Attorney, and said cause having been tried on said date, and evidence having been introduced on behalf of the plaintiff and the defendant, and the court having considered the same, and having heard the arguments of counsel and being fully advised in the premises now makes the following Findings of Fact:

Findings of Fact

I.

The plaintiff, Mariko Kuniyuki, was born in the United States, at Seattle, Washington, on July 2, 1916. By virtue of her birth in the United States, the plaintiff was born a citizen of the United States. She has at all times been and now is a citizen of the United States.

The plaintiff's permanent residence is in Seattle,

Washington; and she claims Seattle, Washington, as her permanent residence.

II.

The Defendant, Dean Acheson, is the Secretary of State of the United States. As such, he is the head of the State Department.

III.

While three years of age, the plaintiff was taken to Japan by her parents, who so took her to Japan for the purpose of providing her with an education in Japan, and for the purpose of her residing in Japan temporarily to secure said education.

In November of 1940, the plaintiff returned to her parents and family in Seattle, Washington. In August of 1941, at the request of her aunt then residing in Japan, the plaintiff returned to Japan to visit with her aunt; and the plaintiff then intended to remain in Japan for a visit only of a period of a few months. The plaintiff was, however, prevented from returning to the United States within the time then intended by her because of the outbreak of war between Japan and the United States.

There is no evidence that either during the war between Japan and the United States, nor prior thereto, or at any time, did the plaintiff commit any act of disloyalty to the United States.

Subsequent to the War, and between 1947 and 1949, the plaintiff was employed by members of a United States Military Government Team, and by members of the Counter Intelligence Corps to serve

the understanding that the said declaration does not comprise any demand which prejudices the prerogatives of His Majesty as a Sovereign Ruler.

Thereafter, and on August 11, 1945, the United States Government, through Secretary of State, James F. Byrnes, rejected said first Japanese offer of surrender, stating:

With regard to the Japanese Government's message accepting the terms of the Potsdam proclamation, but containing the statement, "with the understanding that the said declaration does not comprise any demand which prejudices the prerogatives of His Majesty as a Sovereign ruler," our position is as follows:

From the moment of surrender the authority of the Emperor and the Japanese Government to rule the state shall be subject to the Supreme Commander of the Allied powers who will take such steps as he deems proper to effectuate the surrender terms.

The Emperor will be required to authorize and ensure the signature by the Government of Japan and the Japanese Imperial General Headquarters of the surrender terms necessary to carry out the provisions of the Potsdam Declaration, and shall issue his commands to all the Japanese military, naval and air authorities, and to all the forces under their control, wherever located, to cease active operations and to surrender their arms, and to issue such other orders as the Supreme Commander may require to give effect to the surrender terms.

Thereafter, and on August 14, 1945, the Japanese Government accepted fully the terms of the Potsdam Declaration; and thereupon the President of the United States announced that Japan had unconditionally surrendered without qualifications; and further, that General Douglas MacArthur had been appointed the Supreme Allied Commander to receive the Japanese surrender. On the same day, the United States Government, through Secretary of State James F. Byrnes, notified the Japanese Government of the acceptance of the Japanese surrender offer, and that for the purpose of receiving such surrender and carrying it into effect, General of the Army Douglas MacArthur had been designated as Supreme Commander for the Allied Powers.

On September 2, 1945, the Instrument of Surrender was signed. It provides that:

The authority of the Emperor and the Japanese Government to rule the state shall be subject to the Supreme Commander for the Allied Powers, who will take such steps as he deems proper to effectuate these terms of surrender.

On September 6, 1945, the United States Joint Chiefs of Staff, in a message prepared jointly by the United States Department of State, the War Department and the Navy Department of the United States, and approved by the President, transmitted a message to General Douglas MacArthur, clarifying his authority. The message recited:

The authority of the Emperor and the Japanese Government to rule the State is subordi-

nate to you as Supreme Commander for the Allied powers. You will exercise your authority as you deem proper to carry out your mission. Our relations with Japan do not rest on a contractual basis, but on an unconditional surrender. Since your authority is supreme, you will not entertain any question on the part of the Japanese as to its scope.

Control of Japan shall be exercised through the Japanese Government to the extent that such an arrangement produces satisfactory results. This does not prejudice your right to act directly if required. You may enforce the orders issued by you by the employment of such measures as you deem necessary, including the use of force.

On August 29, 1945, the United States, through the Department of State, the War Department and the Navy Department, acting jointly, and with the approval of the President given on September 6, 1945, announced in an official document, United States Initial Post-Surrender Policy for Japan, stating:

That the ultimate objectives of the United States were to be, amongst others, (a) To insure that Japan will not again become a menace to the United States or to the peace and security of the world.

(b) To bring about the eventual establishment of a peaceful and responsible government which will respect the rights of other states and

will support the objectives of the United States as reflected in the ideals and principles of the Charter of the United Nations.

With respect to the occupation of Japan, it announced that there will be a military occupation of the Japanese home islands to carry into effect the surrender terms and further the achievement of the ultimate objectives stated above.

It further provided that:

Although every effort will be made, by consultation and by constitution of appropriate advisory bodies, to establish policies for the conduct of the occupation and the control of Japan which will satisfy the principal Allied powers, in the event of any differences of opinion among them, the policies of the United States will govern.

With respect to the relationship to the Japanese Government, the document announced that:

The authority of the Emperor and the Japanese Government will be subject to the Supreme Commander, who will possess all powers necessary to effectuate the surrender terms and to carry out the policies established for the conduct of the occupation and the control of Japan.

It provided further that laws, decrees and regulations which conflict with the objectives and policies outlined in the document shall be repealed, suspended or amended as required.

Thereafter, and on December 27, 1945, an agreement was entered into by the Foreign Ministers of

the Soviet Union, the United Kingdom and the United States, in Moscow, providing for a Far Eastern Commission and Allied Council for Japan. Said Far Eastern Commission did not, and does not supersede and supplant the Supreme Commander of the Allied Powers over the Government of Japan. The Supreme Commander or his deputy is the Chairman of the Allied Council. Under the terms of said agreement the Supreme Commander shall issue all orders for the implementation of the Terms of Surrender, the occupation and control of Japan, and directives supplementary thereto. In all cases action will be carried out under and through the Supreme Commander who is the sole executive authority for the Allied Powers in Japan. He will consult and advise with the Council in advance of the issuance of orders on matters of substance, the exigencies of the situation permitting. His decisions upon these matters shall be controlling.

The Supreme Commander has construed his authority as set forth above and the United States in supporting the Supreme Commander for the Allied Powers in various disputes which have arisen with the Far Eastern Commission has construed the Instrument of Surrender and said agreement to the effect that the authority of the Emperor and the Japanese Government to rule shall be subject to the Supreme Commander and not to the Far Eastern Commission. The agreement of the Foreign Ministers to establish the Far Eastern Commission, aforesaid, did not take away the complete power and

authority of the Supreme Commander over the Emperor and the Japanese Government.

The Supreme Commander of the Allied Powers has governed Japan through the issuance of directives. The directives are issued by the Supreme Commander addressed to the Japanese Government and then followed in turn, by some action on the part of the Japanese Government. If the matter is initiated by the Japanese government it becomes a proposal. When the proposal is approved it then becomes a directive.

The policy of the Supreme Commander has been to use the existing form of government in Japan, not to support it. The Japanese people have been completely responsive to the orders of the Supreme Commander. His headquarters have utilized both official cooperation and the docility of the populace. The Supreme Commander has set up various sections under his command and on his general staff. These special sections and S.C.A.P. have accomplished their tasks through the Japanese government. The special sections would draft recommendations which would be presented to S.C.A.P. If S.C.A.P. approved, the recommendations would be transmitted to the Japanese Government in the form of directives and memoranda—ordering or asking, as the occasion might warrant, that a job be done. United States Army and corps commanders established in various areas of Japan, and the Civil Intelligence Section would investigate and report on how the Japanese Government was carrying out the directives and memoranda. If the Japanese Govern-

ment could not or would not follow through, SCAP would tell the Army and corps commanders what to do so that the job would be done.

It has been the basis of occupational policy to utilize the Japanese Government to the fullest extent under SCAP supervision and control.

The United States policies for Japan as announced on September 6, 1945, aforesaid, has additionally, further provided for economic demilitarization which, amongst other things, is to the effect that individuals who do not direct further Japanese economic effort solely toward peaceful ends are barred from economic leadership; and the dissolution of large industrial and banking combinations is provided for.

Pursuant to the foregoing, Japanese banks were dissolved as were large corporations which had theretofore existed; and their properties were taken and distributed to the Japanese people.

There was further provided, for control over all imports and exports by the Supreme Commander, and under his supervision. All Japanese property abroad was taken away.

Pursuant to his duties as Supreme Commander and to effectuate United States policy in Japan, the Supreme Commander, on October 4, 1945, issued a directive which has been commonly known as the Japanese "Bill of Rights," in which the Japanese Government is directed to abrogate and immediately suspend the operations of all provisions of all laws, decrees, orders, ordinances and regulations, as specifically set forth in that directive.

On January 4, 1946, a SCAP directive ordered the removal of undesirable personnel from office. General MacArthur, in his statement to the Far Eastern Commission, on March 29, 1946, announced that by the application of the purge directive of January 4th, 90 per centum of the members of the present Diet, as well as many other persons holding high government office in the war administration, have been removed from government service and barred from public office or activity as officers of political parties. No political group has hereby suffered so greatly as the reactionaries. Every candidate for the New Diet, of whom there are over 3000, has been screened for affiliation or association with militarism and ultra-nationalism.

Further, pursuant to his authority as Supreme Commander, and further to effectuate United States policy in Japan, the Supreme Commander, or Headquarters of the Supreme Commander, took the following steps, or the following took place :

On October 11, 1945, SCAP directed the Japanese Government to liberalize the Constitution of Japan. In obedience to this order the Emperor appointed a committee to do so; and thereupon the Japanese Emperor issued an Imperial Rescript on March 25, 1946, announcing that :

The Constitution of The Empire be revised drastically.

The new Constitution was approved by SCAP, and on March 6, 1946, General MacArthur announced that the Constitution had his full approval.

To implement SCAP directives, in the opinion of SCAP, legislation adopted by the Japanese Diet was necessary. The Supreme Commander announced on March 29, 1946, that:

It was possible to carry out occupational policy through the utilization of the Japanese Government to the fullest extent under SCAP supervision and control only through a functioning legislative body to enact new laws required to implement SCAP directives and to provide for routine governmental business.

General MacArthur further announced that the then Japanese Diet was completely unsatisfactory because of its War attaint and unrepresentative character. On December 18, 1945, following the dissolution of the Japanese Diet, which Diet was unsatisfactory to General MacArthur, General MacArthur ordered an election to be held. This order was in the form of a directive authorizing the holding of the election. This directive under date of January 12, 1946, was authorized to be held under such safeguards as might from time to time be communicated by the Supreme Commander to the Japanese Government.

The authority to hold the general elections was to hold such elections not earlier than March 15, 1946. The elections were, however, postponed from March 31, the date first set, to April 10, 1946, under orders of General MacArthur. After the elections were held, General MacArthur approved their results.

Prior to the elections in a reply to an inquiry

made of him pertaining to the elections with respect to their timing by the Far Eastern Commission, General MacArthur, on March 29, 1946, stated that he could require the dissolution of the Diet and call for another election at any time, in the event the results of the election were unsatisfactory. He further stated that the forces under his command were carefully watching and closely studying the then election campaign. After the April elections, in a statement issued by General MacArthur, on April 25, 1946, General MacArthur stated:

A supervised organization was set up to provide surveillance by troops in the field which would insure immediate disclosure of any irregularities. There was a thorough orientation of all officers of military-government units and tactical forces with emphasis on the high seriousness of the elections. The military-government units were augmented for the purpose of supervision by tactical units and CIC units.

And that:

Ninety per cent of all urban and forty per cent of all rural polls were inspected on election day. This inspection was not merely a cursory examination but included a check to ascertain that all candidates were listed as required and inspected to determine whether any coercion or solicitation existed at the polls.

Also that:

Many other types of observation were made by individual officers.

Said statement further announced that during the election campaign it was noted that the records of all candidates were subject, by SCAP, to review.

During the election the Japanese press cooperated with SCAP in universally emphasizing the election's importance. After the election the Supreme Commander commended the Press for its helpful role in the elections.

SCAP showed a special concern with and an interest in, the role of the women of Japan in the elections. For the first time in the history of Japan, women were allowed to vote in Japanese elections. SCAP encouraged the organization of a Japan Women's Party as well as the Japan Women's League. In approving the results of the election, General MacArthur noted with satisfaction that 60% of the eligible women voters cast their ballot, in contrast to the pre-election speculation that the women's vote would be between 30 and 60%.

In 1946 and 1947, the Japanese people did not have the power within themselves to have any form of government which they chose; and neither the Japanese people nor the Japanese Government had the power to deal with other States; and the Japanese people and the Japanese Government were not independent nor was the Japanese Government an independent state.

The elections conducted in Japan in 1946 and 1947 where polls, in that they were merely expressions of the desires or wishes of the Japanese people, but not the exercise of a command by them that certain candidates for office shall hold public office; nor were said elections a command by the Japanese

people which they were capable of enforcing that certain persons should hold certain public offices.

Conclusions of Law

I.

This Court has jurisdiction under the provisions of the Nationality Act, Section 403, 8 U. S. Code, Section 903, to hear and to make a judicial determination as to whether or not the plaintiff lost her citizenship by voting in the Japanese general elections in 1946 and 1947.

II.

The plaintiff is and at all times herein has been a citizen of the United States; and the plaintiff has not lost her United States citizenship because of her voting in the Japanese elections in 1946 and 1947.

III.

The plaintiff's voting in the Japanese elections in 1946 and 1947, was not her free and voluntary act within the meaning and intent of 8 U. S. Code Section 801(e), United States Nationality Act 401(e).

IV.

In 1946 and 1947, Japan was not a state within the meaning and intent of United States Nationality Act, Section 401(e), (8 U. S. Code Section 801(e)).

V.

The elections held in Japan in 1946 and 1947, were not political elections within the meaning and intent of United States Nationality Act, Section 401(e) (8 U. S. Code Section 801(e)).

Let judgment in favor of the plaintiff and against the defendant herein be entered accordingly.

Dated: This 15th day of Sept., 1950.

/s/ PEIRSON M. HALL,
Judge, United States District
Court.

Received September 7, 1950.

[Endorsed]: Filed September 15, 1950.

In the United States District Court, Western Dis-
trict of Washington, Northern Division

No. 2560

MARIKO KUNIYUKI,

Plaintiff,

vs.

DEAN ACHESON, as Secretary of State,

Defendant.

JUDGMENT

The above cause having come on regularly for trial on August 23, 1950, before the Honorable Peirson M. Hall, Judge Presiding, without a jury, no jury having been requested, the plaintiff appearing by her attorneys A. L. Wirin and Fred Okrand of Los Angeles, California, and William Y. Mambu, of Seattle, Washington; A. L. Wirin and William Y. Mambu, of Counsel, and the defendant appearing by his attorneys, J. Charles Dennis, United States At-

torney, and John E. Belcher, Assistant United States Attorney, and said cause having been tried on said date, and evidence having been introduced on behalf of the plaintiff and the defendant, and the court having considered the same, and having heard the arguments of counsel and being fully advised in the premises, and having made and entered Findings of Fact and Conclusions of Law, now makes and enters the following:

Judgment

1. The plaintiff is and at all times herein has been a citizen of the United States.

2. The purported expatriation of the plaintiff as the result of her voting in the general elections in Japan in April, 1946, is hereby cancelled; and the plaintiff is restored to her full rights as a citizen of the United States; and is adjudged to be a citizen of the United States, with all the rights and privileges thereof.

Dated: This 15th day of September, 1950.

/s/ PEIRSON M. HALL,
Judge, United States District
Court.

OK as to form:

/s/ JOHN E. BELCHER,
Asst. U. S. Atty.

Judgment entered Sept. 16, 1950.

[Endorsed]: Filed September 15, 1950.

[Title of District Court and Cause.]

DESIGNATION OF THE RECORD

Comes now the appellant, Dean Acheson, as Secretary of State of the United States of America, and designates the following as the record to be prepared on appeal in the above-entitled cause:

1. The entire transcript of the proceedings.
2. All the pleadings.
3. The findings of fact, conclusions of law and judgment.
4. All exhibits introduced or admitted in evidence.

/s/ J. CHARLES DENNIS,
United States Attorney.

/s/ JOHN E. BELCHER,
Assistant United States
Attorney.

[Endorsed]: Filed November 10, 1950.

In the District Court of the United States for
the Western District of Washington, Northern
Division

No. 2560

MARIKO KUNIYUKI,

Plaintiff,

vs.

DEAN ACHESON, as Secretary of State,

Defendant.

TRANSCRIPT OF PROCEEDINGS AT TRIAL

Before: The Honorable PEIRSON M. HALL,
District Judge.

August 24, 1950—10:00 o'Clock A.M.

Appearances:

A. L. WIRIN, ESQ.,

Appeared on Behalf of the Plaintiff.

JOHN E. BELCHER, ESQ.,

Assistant United States Attorney,

Appeared on Behalf of the Defendant.

Whereupon, the following proceedings were had
and testimony taken, to-wit:

The Court: Call the calendar.

The Clerk: Cause number 2560, Mariko Kuni-
yuki against Dean Acheson, as Secretary of State.

The Court: Ready?

Mr. Wirin: Plaintiff is ready.

The Court: Is the Defendant ready?

Mr. Belcher: Ready, your Honor.

The Court: I have read the Plaintiff's trial memorandum, the Defendant's trial memorandum and the pleadings. You may proceed.

Mr. Wirin: In this matter, your Honor, I have been debating whether or not to make an opening statement and decided if your Honor has no objection not to make any opening statement because there are some issues of fact. The Plaintiff is here to testify to them, namely, with respect to her state of mind. It occurred to me that that phase of it, at least, could come from her rather than from any opening statement that I would make as to what she would testify. There are some questions of law which are reflected in the memoranda which may have to be argued.

The Court: All right.

Mr. Wirin: We will call the Plaintiff. She does not speak English well and we have an interpreter in attendance who, without objection from Mr. Belcher, United [2*] States Attorney, may be——

Mr. Belcher: I would prefer, if your Honor please, that we attempt to make the examination in English and, if it is determined she doesn't understand, then it is time to have an interpreter. She claims to be an American citizen and has lived in this country for some time prior to going to Japan.

The Court: That is all right. We will see how we get along.

Mr. Wirin: It happens in this case this Plaintiff went to Japan when she was taken there as a child

* Page numbering appearing at foot of page of original Reporter's Transcript of Record.

by her parents and has been living in Japan most of her life. So that may be an additional fact to consider. But we can try it that way and see how far we can go.

The Court: If she needs an interpreter, she may ask for one. The witness will come forward and be sworn.

MARIKO KUNIYUKI

Plaintiff herein, called as a witness on her own behalf, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Court: What is your name?

The Witness: Mariko Kuniyuki. [3]

The Court: Where do you live, now?

The Witness: 1303 Washington Street, Seattle.

By Mr. Wirin:

Q. Where and when were you born?

A. July 2nd, 1916.

Q. Where and in what city were you born?

A. Seattle.

The Court: You have been living in Japan?

The Witness: Yes.

The Court: When did you go to Japan?

The Witness: 1918.

The Court: 1918?

The Witness: Yes.

The Court: You were two years old?

The Witness: Yes.

The Court: And you have lived there in Japan from 1918 until when?

(Testimony of Mariko Kuniyuki.)

The Witness: 1940.

The Court: Until 1940?

The Witness: Yes.

The Court: Where did you learn the English language?

The Witness: High school.

The Court: In Japan? [4]

The Witness: Yes.

The Court: You learned to read and write it?

The Witness: A little bit.

The Court: But not to speak it well?

The Witness: No.

The Court: Do you understand it when it is spoken?

The Witness: No; just a little bit.

The Court: Just a little bit?

The Witness: Yes.

The Court: I think that I would be justified, in view of that showing, to swear an interpreter. Does the Defendant agree that an interpreter may be used?

Mr. Belcher: Yes, your Honor.

The Court: All right. Mr. Clerk, you may swear the interpreter.

(Whereupon, Fred Hattori was sworn by the Clerk of the Court to act as interpreter for the witness.)

The Court: Let us have your name, sir.

The Interpreter: Fred Hattori.

The Court: I think perhaps if Mr. Hattori would

(Testimony of Mariko Kuniyuki.)

retain his seat at the end of Counsel table, then he can translate from there.

Mr. Wirin: Very well, your Honor. At this time, [5] I would like to offer in evidence—I understand there is no objection—a certified copy of the Plaintiff's birth certificate.

(Whereupon, document, entitled "Certified copy of Birth Certificate," was marked as Plaintiff's Exhibit 1 for identification.)

The Court: No objection? It is in evidence.

Mr. Belcher: No objection.

The Court: In evidence.

(Plaintiff's Exhibit No. 1 received in evidence.)

Q. (By Mr. Wirin): You testified that you are now living in Seattle. With whom if with anyone are you living in Seattle?

A. (Through the interpreter): Parents and brothers.

Q. What are the names of your parents?

A. (Through the Interpreter): Kojiu Kuniyuki, father, and Seki Nishimura, mother.

Q. What is the brother's name?

A. (Through the Interpreter): Yukio Kuniyuki that is her older brother.

Q. Was he at any time in the Army of the United States? A. Four years.

The Court: Four years?

The Witness: Yes. [6]

(Testimony of Mariko Kuniyuki.)

The Interpreter: Four years in the army.

Q. (By Mr. Wirin): In the Army of the United States?

A. (Through the Interpreter): Yes, United States Army.

Q. Do you know where he served while he was serving in the United States Army?

A. Europe and Italy.

The Court: Europe and Italy.

The Interpreter: He served in the European theater for two years.

Q. (By Mr. Wirin): What is your residence?

A. (Through the Interpreter): 1303 Washington Street.

Q. What is your father's business or occupation?

A. Restaurant.

Q. Where?

A. 114 First Avenue South, Seattle.

Q. Do you know how long he has been in the business of operating a restaurant?

A. Almost five years.

The Interpreter: After the war almost five years.

The Court: Are you married?

The Witness: Yes—not now.

The Court: Not now. You were married?

The Witness: Yes.

The Court: Were you married in Japan or in the [7] United States?

The Witness: In Japan.

The Court: In Japan?

The Witness: Yes.

(Testimony of Mariko Kuniyuki.)

The Court: Before 1940?

The Witness: After 1940.

The Court: After 1940?

The Witness: Yes.

The Court: When?

The Witness: 1942.

The Court: 1942?

The Witness: '42.

Q. (By Mr. Wirin): Is your husband alive?

A. (Through the Interpreter): He is dead.

Q. When did he die? A. 1944.

Q. So you don't have a husband, now?

A. No.

The Court: When was it you said you came to the United States?

The Witness: (Through the Interpreter): She is asking if at this time?

Mr. Wirin: There is more than one occasion, your Honor.

The Court: Well, when did you first come to [8] the United States?

The Witness (Through the interpreter): 1940. November.

The Court: And then you returned to Japan?

The Witness: 1941, August.

The Court: August, 1941. And then you returned to the United States when?

The Witness: 1950, August 6th.

The Court: What was the year—1950?

The Interpreter: Yes.

Mr. Wirin: She has returned to the United

(Testimony of Mariko Kuniyuki.)

States under permission of the State Department for the purpose of testifying in her court case. The State Department, pursuant to the provisions of United States Code, Section 903, under which this was filed, issued a certificate of identity to her to return her for the purpose of testifying. She is here under \$500 bond and has just returned.

Did she give the court the month that she returned?

The Court: August, 1950. That is this month.

Mr. Wirin: And we are getting a very speedy trial. Shall I proceed, your Honor?

The Court: If you would.

Q. (By Mr. Wirin): How old were you when you first went [9] to Japan? (Interpreter puts question to witness). A. Three.

The Interpreter: Three years old.

The Witness: Yes.

Q. (By Mr. Wirin): Who, if anyone, took you to Japan?

A. (Through the Interpreter): Her parents.

Q. Did both of your parents go to Japan, at that time?

A. (Interpreter puts question to witness): Yes.

The Interpreter: Yes, they both did.

Q. (By Mr. Wirin): Did any other members of your family go to Japan, at that time?

A. And my brothers—two brothers.

Q. Did your parents remain in Japan for a long time or did they return to the United States?

A. About seven months.

(Testimony of Mariko Kuniyuki.)

The Interpreter: About seven months. Your parents stayed in Japan about seven months?

The Witness: Yes.

Q. (By Mr. Wirin): What about your brother; did he stay in Japan or did he come back to the United States, do you know?

A. Came back to the United States.

Q. You stayed in Japan? A. Yes.

Q. Do you know why you stayed or for what reason you [10] stayed in Japan after your parents returned to the United States?

A. (Through the Interpreter): It was the wish of the parents to have her in Japan to get some Japanese education.

Q. How old were you, as you can best recollect it, now, when you first knew that it was the wish of your parents for you to stay in Japan to get an education, since when you first went to Japan you were two or three years old?

A. (Through the Interpreter): During the high school.

The Court: Did they leave you there with some relatives?

The Witness (through the interpreter): Yes.

The Court: Whom?

The Witness (through the interpreter): First, it was with the grandmother and the second time it was with her aunt.

The Court: At what place?

The Witness (through the interpreter): Yamaguchi University.

The Court: In Tokyo?

(Testimony of Mariko Kuniyuki.)

The Witness (through the interpreter): Yamaguchi is the southern part of the mainland of Japan. [11]

The Court: That was Yamaguchi University. What town?

The Witness (through the interpreter): It is a county of Oshima.

The Court: O-s-h-i-m-a?

The Witness (through the interpreter): Yes.

The Court: What town?

The Witness (through the interpreter): Hiraii Village.

The Court: Did you stay there in that village all of the time?

The Witness (through the interpreter): Until she was 12 years old, when she moved where her aunt was.

The Court: Where was that?

The Witness (through the interpreter): At the Prefecture.

The Court: What village?

The Witness (through the interpreter): City of Mito.

The Court: And you remained there how long?

The Witness (through the interpreter): Until she came to the United States.

The Court: Until 1940?

The Witness: '50. [12]

The Interpreter: 1950. Well, she was here.

The Court: Until 1940?

The Witness (Through the interpreter): Yes.

(Testimony of Mariko Kuniyuki.)

The Court: And then you returned back to this Mito Village?

The Witness (through the interpreter): Yes.

The Court: And that is where you lived until you came here in August?

The Witness (through the interpreter): Yes, the same place.

The Court: The same place?

The Interpreter: Yes.

The Court: All right.

Q. (By Mr. Wirin): While you were in Japan, the first time, did you have any correspondence with your parents?

A. (Through the interpreter): Yes.

Q. Did your parents send you any money to support you?

A. (Through the interpreter): Yes.

Q. At that time, the first time you were there, did you intend to remain permanently in Japan or did you intend to return to the United States?

A. (Through the interpreter): I had the intention to come back to the United States.

Q. Did you return to the United States in 1940?

A. (Through the interpreter): Yes. [13]

Q. Then did you go back to Japan?

A. (Through the interpreter): Yes.

Q. Why did you go back to Japan?

A. (Through the interpreter): Before she takes a permanent residence in the United States, her aunt wishes to see her once more; it was the wish of her aunt, and therefore she returned.

(Testimony of Mariko Kuniyuki.)

Q. How long did you intend to be with your aunt when you returned to Japan in 1941?

A. (Through the interpreter): It was during the summer vacation. She was going to school and she thought, well, there was a summer vacation and she could visit her aunt while the summer vacation was on.

Q. When did you visit your aunt,—what month?

A. 1941, August.

Q. How long did you intend to remain in Japan, at that time?

A. (Through the interpreter): Three or four months.

Q. Did you return to the United States in 1941, '42?

The Court: Well, obviously she didn't if she didn't come back until 1950.

Mr. Wirin: That is true: I was going to ask her why she did not.

The Court: Why don't we just ask her why she didn't? [14]

Q. (By Mr. Wirin): Why didn't you return to the United States before August, 1950?

The Court: Well, everybody knows why she didn't come here between 1941 and 1945. The country was at war.

Mr. Wirin: All right, then, if the Court will take judicial notice of it. I thought her statement to that effect might be some evidence to corroborate what everybody knows.

The Court: All right. Put it in the record.

Mr. Wirin: Ask her why she didn't return.

(Testimony of Mariko Kuniyuki.)

A. (Through the interpreter): Due to the war, there was no boat to return to the United States.

The Court: By the way, were you employed, after you graduated from high school, while you were in Japan?

The Witness: (Through the interpreter): Yes.

The Court: At what?

The Witness: (Through the interpreter): She was teaching at the school.

The Court: Teaching in the Japanese school?

The Interpreter: Yes.

The Court: What subject?

The Witness: (Through the interpreter): General subjects. [15]

The Court: General subjects?

The Interpreter: Yes.

The Court: Well, was she teaching a grade; that is, second grade, third grade or some general subject in the grade?

The Witness: First grade, second grade.

The Interpreter: First grade and second grade.

The Witness: And one time the fourth grade.

The Interpreter: At one time she was teaching the fourth grade.

The Court: In Mito?

The Witness: (Through the interpreter): Yes, in Mito, in one school.

Q. (By Mr. Wirin): What years did you teach those schools? A. 1935 to 1940.

The Court: 1935 to what?

The Interpreter: 1940. 1935 to 1940.

(Testimony of Mariko Kuniyuki.)

The Witness: Oh,—to 1940.

The Interpreter: Yes.

Q. (By Mr. Wirin): What, if anything did you do, during the war while you were in Japan?

A. (Through the interpreter): Stayed home at aunt's place.

Q. Since the war what employment have you had in Japan?

A. (Through the interpreter): I was working at the Officers of the United States Army. [16]

The Court: That is the Officers' Barracks?

The Interpreter: Yes.

Q. (By Mr. Wirin): By whom were you paid or how were you paid?

A. (Through the interpreter): I was receiving my wages from the Military Government and afterward they changed it to CIC.

Q. What is the CIC if you know?

A. (Through the interpreter): In Japanese I believe it means intelligence.

Mr. Wirin: It is Counter Intelligence.

The Court: Or it might be Commander-in-Chief.

Q. (By Mr. Wirin): Did you ever work at any time at U. S. House number 124?

A. (Through the interpreter): Yes, I worked there.

The Court: House 124 where?

Q. (By Mr. Wirin): Where?

A. (Through the interpreter): Mito.

The Court: Mito. And that is where you were employed in the Officer's Barracks at Mito?

(Testimony of Mariko Kuniyuki.)

The Witness: Yes.

Q. (By Mr. Wirin): What kind of work did you do there? A. Housekeeper.

Q. Who lived in the house; what officers lived in the house? [17]

A. (Through the interpreter): At first he was a Major Voght.

Q. Anyone else?

A. (Through the interpeter): Next it was a Captain Givonica.

Q, Did you pick up some English while you were working there?

A. (Through the interpreter): Yes.

The Court: Can you say "bell?"

The Witness: Bell.

Q. (By Mr. Wirin): While you were in Japan in 1946 and '47, did you vote in any elections in Japan? A. (Through the interpreter): Yes.

Q. What were the circumstances and what are the reasons for your having voted in the elections in Japan in 1946 and 1947?

Mr. Belcher: Objected to as immaterial.

The Court: Overruled. I might say to Counsel that I do not find any reference in the memorandum or the brief to the proclamation of the Commander-in-Chief—the Supreme Commander for the Allied Powers calling the election. I don't know what book I could turn to for reference to it. And I shall say, also, that there is a question in my mind as to whether or not it was an election or merely a plebescite. [18]

(Testimony of Mariko Kuniyuki.)

Mr. Wirin: May I state this to your Honor, briefly, in that connection?

In the first place, we intend to offer evidence to the Court as to the nature of the election and that evidence will include a proclamation by General MacArthur as well as by other documents issued by General MacArthur in connection with the election, so that we will proffer such documentary evidence to the Court.

Our brief, if I may say to the Court, in that connection is very meager and quite inadequate. We first expect to introduce evidence and then perhaps some more law, also, as to the matter of the election,—first, the circumstances and the facts pertaining to the election and then some law as to the legal conclusion.

The Court: In what elections do you propose to show the Plaintiff voted,—one in '46 and one in '47?

Mr. Wirin: I had better ask the Plaintiff, right now, and have her testify as to in what elections she voted?

The Court: All right. But I will want the proclamation relating to each of them or to all of them.

Mr. Belcher: I have no objection to Counsel [19] offering, at this time—(indicating—booklet).

Mr. Wirin: Perhaps it would be all right to do so at this time. I offer into evidence as Plaintiff's next exhibit a document entitled "Occupation of Japan," published by the Department of State and further to be described as Publication 2671 of the Far Eastern Series 17. It is an official document

(Testimony of Mariko Kuniyuki.)

printed by the United States Government Printing Office for sale by the Superintendent of Documents, and I paid the price of 35 cents for it.

The Clerk: Plaintiff's Exhibit 2 marked for identification.

(Booklet entitled "Occupation of Japan" marked as Plaintiff's Exhibit 2 for identification.)

Mr. Wirin: I offer it in evidence, your Honor.

Mr. Belcher: No objection.

The Court: It may be received in evidence.

(Plaintiff's Exhibit 2 received in evidence.)

Mr. Wirin: On page 136, Appendix 27.

I may say, your Honor, that I will have occasion to refer to portions of this document. I will say to the Court that following page 50—everything following page 50 are official documents—the text of the original and official documents, beginning with the [20] Cairo Conference and ending with a statement by President Truman concerning Japan.

The Court: Is the President's Directive of August 25th—I think it is—1945 in here, the text of it?

Mr. Wirin: I am going to disclose my ignorance by admitting that I don't know.

The Court: That was the first Directive following the signing of the Instrument of Surrender?

Mr. Belcher: The Surrender, I think, is set out.

Mr. Wirin: It is Appendix 6, I believe.

Mr. Belcher: Page 62.

(Testimony of Mariko Kuniyuki.)

Mr. Wirin: At page 59 there is a statement of President Truman.

The Court: No; there is a Directive. You quoted a portion of it or it is quoted in the Arikawa case. It is dated August 29, 1945, and promulgated by the President I think September 9th; and one on September 6th. They have a good index in this book.

Mr. Wirin: Yes, they have.

The Court: It doesn't appear to be in here.

Mr. Wirin: Would your Honor give me that again?

The Court: It was promulgated September 9th and [21] won on September 6th.

Mr. Wirin: That is on Page 73, your Honor.

The Court: Yes.

Mr. Wirin: That is the one. I think more technically it is a document promulgated by the Joint Chiefs of Staff and approved by the President on September 6th. That is on page 73 to pages—

The Court: Yes, I find it.

Mr. Wirin: There is another document—a document on page 88 which may be considered a companion document and it was issued on September 6th by the President. It delineates the authority of General MacArthur—a document again issued by the Joint Chiefs of Staff and prepared by the key War and Navy Departments.

But the key document is that on page 73. That document is a fairly lengthy document as State documents go. I don't know how true what I have

(Testimony of Mariko Kuniyuki.)

just said is but some State documents, I suppose, are extensive.

At any rate, this document, which states the initial Post-Surrender Policy of the United States in Japan, outlines the objectives in Japan.

I may say, parenthetically, at this time, it is our contention at least that these elections were [22] elections called by General MacArthur for the purpose of maintaining and carrying out United States objectives in Japan.

Mr. Belcher: That, I take it, is just Counsel's opinion.

Mr. Wirin: That is our claim. I think the claim is supported by the documents but that is a matter of the Court to determine, later.

The Court: Let's find out which election she voted at and then see if there is something in here about calling them.

Mr. Wirin: At page 136 there is at least one directive—appendix 27 as page 136—one directive with respect to calling elections. Now, that directive—apparently from General MacArthur's Headquarters to the Japanese Government's—reads: "You are hereby authorized to hold an election."

Later on in these documents—and I will get to them, later—it appears—that is my conclusion, but I think the documents support the conclusion, that General MacArthur's Headquarters authorized the election, commanded it be held, postponed it when it appeared that the date wasn't appropriate, and supervised the election with occupation troops, and

(Testimony of Mariko Kuniyuki.)

determined who should be candidates and who should [23] not be candidates and finally approved the results of the election. But that is a matter I hope to present to the Court in a more organized manner, later on, perhaps in the course of the oral argument, at which time I will try to coordinate the showing which the Plaintiff claims is made by this document "Occupation of Japan," and some other official documents we have.

Q. (By Mr. Wirin): In how many elections did you vote?

A. (Through the interpreter): Six times.

Q. What were you voting for?

A. (Through the interpreter): For the City Council, the Mayor, the Council for the Prefecture, and for the Congress.

The Court: Does she mean that she voted at six different elections or that she voted on six different offices at one election?

The Witness: (Through the interpreter): Yes, counting the finals, too.

The Court: Counting the finals, too?

The Witness: (Through the interpreter): Yes.

The Court: I am not sure that I understand her. When did she first vote, what year, what time?

The Witness: 1946.

The Interpreter: 1946.

The Court: What month? [24]

The Witness: (Through the interpreter): November.

The Interpreter: November.

(Testimony of Mariko Kuniyuki.)

The Court: November, 1946?

The Interpreter: Yes.

The Court: When did she vote again?

The Witness: (Through the interpreter): 1947.

The Interpreter: 1947. She said the next time was in 1947. She said there are some papers, here, that will show when she voted.

The Court: Well, what month was it in 1947?

The Witness: (Through the interpreter): April, it was.

The Court: April. Did you vote again in '47?

The Witness: (Through the interpreter): Yes.

The Court: When?

The Witness: (Through the interpreter): It was all in the same month.

The Court: Well, several times in the same month?

The Witness: (Through the interpreter): Yes.

The Court: When did she again vote?

The Witness: '47.

The Interpreter: 1947 was the last.

The Witness: '48. (Witness talks to the interpreter.) [25]

The Interpreter: There were some elections in 1948 but I didn't vote.

The Court: Nor 1949?

The Witness: (Through the interpreter): Not after 1948; therefore I don't know when the election was.

The Court: All right. In the November, 1946, election, what election was that?

(Testimony of Mariko Kuniyuki.)

The Witness: (Through the interpreter): For the Congress?

The Court: For Congress?

The Interpreter: Yes.

The Court: That was the National elections?

The Witness: (Through the interpreter): Yes. it is.

The Court: And you only voted one time, there?

The Witness (Through the interpreter): Yes.

The Court: Then in April, 1947, that was the local elections?

The Witness: (Through the interpreter): Yes, it was for the Mayor, the City Council, the Council for the Prefecture and the Governor.

The Court: Local offices?

The Interpreter: Yes.

The Court: And there were two elections, one Primary and one Final, is that right?

The Witness: (Through the interpreter): In the Governor's case the vote was tied so there was a run-off election.

The Court: She voted, then, I take it, three different times on three different dates? Ask her if that is correct.

The Witness: (Through the interpreter): Yes, I think so.

The Court: That is once in November, 1946, for the House of Representatives; and twice in April, 1947, for the local offices and for the local governor or whoever it was, is that correct?

The Witness: (Through the interpreter): Yes.

(Testimony of Mariko Kuniyuki.)

Q. (By Mr. Wirin): May I ask in that connection: Did you vote in April, 1946?

The Court: '47.

Mr. Wirin: My question is '46.

A. (Through the interpreter): I think it was in November but it could be April, she says, in 1946.

The Court: Do you have documents, here, showing her voting record?

Mr. Belcher: The only document we have, if your Honor please, is what has been certified to by the Secretary of State as the grounds upon which she [27] was denied admission to the United States—voting on the Japanese political elections of April, 1946.

Q. (By Mr. Wirin): You testified that you did not vote in the elections of 1948, is that correct?

A. (Through the interpreter): Yes.

Q. Why didn't you vote in those elections?

A. (Through the interpreter): I found out that if I vote I lose my American citizenship, therefore I didn't vote.

The Court: How did you find that out?

The Witness: (Through the interpreter): Through my father's friend.

Q. (By Mr. Wirin): Why did you vote in the 1946 and '47 elections; what were the reasons for your voting and the circumstances surrounding your vote?

Mr. Belcher: Your Honor has already ruled but I am objecting on the grounds it is immaterial.

The Court: Overruled.

(Testimony of Mariko Kuniyuki.)

A. (Through the interpreter): After the war ended, General MacArthur and the occupational forces had granted the women in Japan for voting; and to vote I thought it would help the cause of democracy in Japan. It was repeated and emphasized again and again by the occupation forces, and therefore I thought it was my duty to vote. [28]

The Court: Were you at any time told by the occupation forces or anyone connected with the Army of Occupation that if you voted you might lose your American citizenship?

The Witness: (Through the interpreter): No.

The Court: Did you discuss it with anybody?

The Witness: (Through the interpreter): No.

The Court: With either the Major or the Captain for whom you were keeping house?

The Witness: (Through the interpreter): She voted before she started working for the American Officers.

The Court: Oh, I see.

Q. (By Mr. Wirin): Did you in 1947 attempt to return to the United States as a citizen of the United States; did you try to return?

A. (Through the interpreter): No.

Q. Did you try to see the United States Consul?

A. (Through the interpreter): Yes, I went to see the American Consul in 1947.

Q. For what reason did you go to see the United States Consul in 1947?

A. (Through the interpreter): I heard that after I voted I would lose my American citizenship.

(Testimony of Mariko Kuniyuki.)

To make it sure, I went to consult with American Consul. [29]

Mr. Wirin: "Foreign Service of the United States" is the title of this document. May it be marked for identification?

The Court: Number 3.

(Mimeographed document, consisting of one sheet, entitled "The Foreign Service of the United States of America, American Consular Service, Yokohama, Japan" was marked as Plaintiff's Exhibit 3 for identification.)

Mr. Belcher: No objection.

The Court: In evidence.

(Plaintiff's Exhibit 3 received in evidence.)

Mr. Wirin: We offer it in evidence. I understand there is no objection.

The Court: Admitted.

Q. (By Mr. Wirin): Did you receive from the American Consul the document which is Plaintiff's Exhibit 3?

A. (Through the interpreter): Yes.

Q. Did you notice that the document requested or suggested *that you* information to the Consul as to your voting?

A. (Through the interpreter): Yes, I understand.

Q. Did you, pursuant to the request or suggestion contained in Plaintiff's Exhibit 3, file an affidavit—

(Testimony of Mariko Kuniyuki.)

The Court: Let's mark it and ask her if she [30] filed it.

Mr. Belcher: If your Honor please——

Mr. Wirin: As far as marking it is concerned, we have a difficult legal question. The document is part of the State Department's file which Mr. Belcher showed me this morning. I would like to offer the document she signed. Mr. Belcher would like to offer that and everything else. I have objections to other material in here.

I would like to offer with Mr. Belcher's permission merely the document which contains her affidavit and then contains her signature and is sworn to. Then you can offer the remaining portions, later, if you care to. Is that agreeable?

Mr. Belcher: I would prefer to have my exhibit offered en toto. I haven't any objection, if your Honor please, for the purpose of the record—the witness having admitted she made this affidavit—to having the document exhibited to her, as to identifying her signature, and then have the document read into the record.

Mr. Wirin: Either way.

The Court: Counsel is entitled to have the document introduced in evidence. It is here in the Court room and his client signed it. [31]

Mr. Wirin: With the Court's permission, I would rather do it the other way. It is not too long a document.

The Court: All right. Let's have the whole docu-

(Testimony of Mariko Kuniyuki.)

ment, then, marked as Defendant's Exhibit A for identification.

(Document, consisting of nine sheets of paper, marked as Defendant's Exhibit A for identification.)

Q. (By Mr. Wirin): Is this your signature?

A. Yes.

Q. Did you swear to this document before the American Vice Consul, Laura C. Brining?

A. (Through the interpreter): Yes.

Q. This document that you filed is in English?

A. Yes.

Q. Just tell us, briefly, how this affidavit was prepared in English.

A. (Through the interpreter): The man working at the American Consul typed that out while she was talking to him.

The Court: You talked to him in Japanese?

The Witness: (Through the interpreter): Yes.

The Witness: Yes.

The Court: And he typed that in English? [32]

The Witness: Yes.

The Court: And he explained that to you in Japanese?

The Witness: (Through the interpreter): He didn't ask me very many questions but he prepared that paper through my statements.

Q. (By Mr. Wirin): Did you have a statement which had been prepared before you went to the Consul?

(Testimony of Mariko Kuniyuki.)

A. (Through the interpreter): No, I didn't have any statement.

Mr. Wirin: May I now read this document into the record?

The Court: All right.

Mr. Wirin: "Affidavit. I, Mariko Kuniyuki, do solemnly swear that:

"I hereby express my reasons for having voted and thus participated in the democratic elections held in Japan in April, 1946, and May, 1947.

I was born on the 2 July, 1916, at 620 Weller Street, Seattle, Washington, and named Mariko Kuniyuki. At the age of 3, I was brought to Japan to live with my grandmother as my parents were having a difficult time getting started in the United States. Later in life, my parents felt that as part of my education had thus far been in Japan, I may as well complete it and then return to the United States, which I did during 1940. After several months in the States, my aunt, living in Japan, begged me to come and pay them a final visit prior to permanently settling in the United States. This I did. I spent a few months in Japan and decided to return to my home in Seattle but was not permitted to do so as Japan was controlled by militarists. Thus, I was detained in Japan throughout the war.

"After the termination of war, here, in Japan, there came into effect the Women's Suffrage through which the women were given the chance to participate in the democratic future of Japan and,

(Testimony of Mariko Kuniyuki.)

at the time of the elections, I constantly read much in the newspapers and other publications in addition to election guidance programs over the radio, that were sponsored by the Central Government of Japan and Occupational Authorities from the offices of the Supreme Commander, Eighth Army, and Military Governments, that it was absolutely essential that every woman of voting age in [34] Japan should turn out at the"—

The next word reads: "pools." I suppose it means polls.

—"pools thereby positively asserting themselves as voters and exponents of democracy. So I, in total ignorance of the existence of the Nationality Act, but, with a view toward exercising my ideas with respect to democratic practices, voted in the same way as the Japanese women citizens, not realizing for a moment that by so doing, I was in effect, relinquishing my American citizenship. It was only through the so convincing approach of occupation force voting drives and no talk of we few "orphan Americans" or instructions to us, that prompted me to participate in the great democratic spirit which engulfed everyone at the time. I did not vote under duress. It was only after the deed had been done that public notice was given to we "orphans" that if we had voted, we had violated the Nationality Act."

Then there is the signature, "Mariko Kuniyuki. Subscribed and sworn to before me this 11th day of July, A.D. 1950. Lora C. Bryning, American

(Testimony of Mariko Kuniyuki.)

Vice Consul. Service No. 648; Tariff No. 38; No fee prescribed." [35] And apparently the State Department's Seal.

Mr. Belcher: "I did not vote under duress."

The Court: He read that,—she did not vote under duress but she voted under the democratic spirit.

Mr. Wirin: May I approach the Bench?

The Court: Why do you want to approach the Bench?

Mr. Wirin: Because there is something I want to discuss with the Court not in the presence of the Plaintiff.

The Court: Fine. We will take a recess and you may come into my chambers.

(Short recess.)

Q. (By Mr. Wirin): Now, I shall call your attention to the fact that Plaintiff's Exhibit 3, namely, the letter to you from the American Consul is dated October 21, 1948, and the affidavit which I have just read into the record is dated the 11th day of July, 1950. Now, I ask you this: Did you in October, 1948, submit any statement to the Consul?

A. (Through the interpreter): Yes.

Mr. Wirin: May this document which is entitled "Statement" and dated the 28th day of October, 1948, be marked as an exhibit? [36]

(Document entitled "Statement" and dated 28 October 1948 marked as Plaintiff's Exhibit number 4 for identification.)

(Testimony of Mariko Kuniyuki.)

Q. (By Mr. Wiring): I show you Plaintiff's Exhibit 4 for identification and ask you what that is?

A. (Through the interpreter): This paper explains why I was left in Japan and why I voted.

Q. What if anything did you do with the paper as far as the United States Consul is concerned?

The Court: Let's find out how the paper came into existence.

Q. (By Mr. Wirin): How was that paper prepared?

A. (Through the interpreter): I was working for Captain Gibanica. Captain Gibanica prepared this statement for me.

The Court: He typed it out?

The Witness: (Through the interpreter): Yes.

The Court: Where was the interpreter,—at Captain Gibanica's house?

The Witness: Military Government.

The Witness: (Through the interpreter): He was a person from the Military Government.

Q. (By Mr. Wirin): Was he at the Captain's house when this paper was prepared?

A. (Through the interpreter): The interpreter and I went [37] to Captain Gibanica's house.

Q. Did you tell the interpreter the reasons why you voted so that the interpreter could interpret what you said into English for the Captain?

Mr. Belcher: If your Honor please, I believe this is wholly irrelevant. I can't meet any such issue as that. There is no pleading to the effect

(Testimony of Mariko Kuniyuki.)

of any fraud, and that is the only purpose of this examination is fraud upon the part of somebody connected with this matter. That is what it is leading up to.

The Court: I don't think it would amount to that. I think it is material, competent and relevant under her position.

Mr. Belcher: If your Honor will allow me an exception.

The Court: The objection is overruled.

A. (Through the interpreter): Yes, I did.

Q. (By Mr. Wirin): Did this conversation or what you are talking about take place in October, 1948?

A. (Through the interpreter): Yes.

Mr. Belcher: My objection further is that it is self serving.

The Court: It is admissible. The objection is overruled.

Q. (By Mr. Wirin): What did you do with that document [38] which is Exhibit 4 for identification; what did you do with the document which is before you?

A. (Through the interpreter): I took it to the Consul.

Q. What happened to it when it got to the Consul?

A. (Through the interpreter): They received it.

The Court: How did you get it back?

The Witness: (Through the interpreter): This is a copy.

(Testimony of Mariko Kuniyuki.)

The Court: How did you get that paper?

The Witness: (Through the interpreter): This was the paper the Captain prepared for me.

The Court: Is this the piece of paper that you left at the Consul?

The Witness: (Through the interpreter): No, it isn't. The one I took to the Consul was left there and they kept it.

Mr. Belcher: I submit the original is the best evidence, if the Court please.

Mr. Wirin: Why, yes; the Consul has it.

The Court: Did you demand it?

Mr. Wirin: Yes. In fact for some time——

Mr. Belcher: No issue of this type has ever been injected into this case and the pleadings have been made up for several months. We will have to ask for a continuance. [39]

Mr. Wirin: Let me go on for just a minute and maybe Mr. Belcher won't be so concerned.

Q. (By Mr. Wirin): In 1950, at the time you were interviewed by the Consul at the time you signed the affidavit which has been read, was there any conversation about coercion with the Consul?

The Court: The word coercion is not used in the affidavit.

Mr. Wirin: That is right. I withdraw the question.

Q. (By Mr. Wirin): Was there any conversation about duress?

A. (Through the interpreter): Yes. I was asked if there was any duress concerning it.

(Testimony of Mariko Kuniyuki.)

The Court: What is the Japanese word for duress?

The Witness: (Through the interpreter): Yes.

The Court: Yes. What? What is the word?

The Witness: (Through the interpreter): Well, harsh treatment.

The Court: Harsh treatment?

The Interpreter: Yes.

The Court: And what is the Japanese word?

The Interpreter: She is asking, now, is this duress concerning the elections or not? [40]

The Court: No. All I want to know is what the Japanese words were that were used and which is now interpreted, here, as duress. She gave two words.

(Interpreter repeats question in Japanese to the witness.)

The Court: I think she answered the question a while ago. But she answered it so fast I don't know as I could understand her. I don't know that it would have done any good if I did. What are the words she used, now, for duress?

The Witness: (Through the interpreter): Tied to something or bound to something or without freedom.

The Court: What were the words that the interpreter used; that is what I want to know; when he asked her if there had been duress?

The Interpreter: Appaku is the word I used.

(Testimony of Mariko Kuniyuki.)

She now says "coming to the force,"—"By the force."

The Court: All I want to know is the words he used and then I want to get the literal translation.

The Interpreter: Appaku.

The Court: Is that the word he used when he asked you if there had been any duress?

The Interpreter: She now says that maybe the man at the Consul said, "Did you vote by [41] force?"

Q. (By Mr. Wirin): When she says "by force" does she mean as the result of force?

The Court: No. Let's find out what the interpreter said to her. What is the Japanese word for force?

The Interpreter: Appaku is the word.

The Court: Appaku?

The Interpreter: Yes.

The Court: What is the Japanese word for harsh treatment? Ask her what her idea of it is?

The Interpreter: "By force," she says.

The Court: A while ago you translated something she said as harsh treatment. Now, what are the Japanese words for harsh treatment?

The Witness: (Through the interpreter): Appaku.

The Court: Appaku?

The Interpreter: Yes.

The Court: And the literal translation of appaku is force?

(Testimony of Mariko Kuniyuki.)

The Interpreter: "To press down."

The Court: All right.

Q. (By Mr. Wirin): In the paper which is before you and which is Exhibit 4 for identification, and which you testify is a statement that was prepared for you after you gave the reasons for your voting to an [42] interpreter, you did not say anything about voting under duress did you?

Mr. Belcher: Now, just a moment. That is putting the words in the mouth of the witness.

Mr. Wirin: Not only that but the Exhibit speaks for itself.

The Court: As a matter of fact, there was no force used to compel you to vote was there?

(Interpreter puts question to the witness in Japanese.)

The Court: Physical force.

The Witness: (Through the interpreter): No, there wasn't any.

The Court: Only the force of the spirit.

The Witness: (Through the interpreter): Yes.

The Court: Was there any physical threat made, —if she did not vote?

The Witness: (Through the interpreter): There wasn't any.

The Court: Was there any threat of bodily harm to her or loss of job or loss of food or loss of pay or loss of home?

The Witness: (Through the interpreter): No, there wasn't any.

(Testimony of Mariko Kuniyuki.)

The Court: I think, Mr. Belcher, that [43] eliminates the fear that you had. There isn't any intention on the part of Plaintiff's Counsel, here, to claim fraud.

Mr. Wirin: That eliminates, also, any further examination I have of the Plaintiff. Your witness.

Cross-Examination

By Mr. Belcher:

Q. What was the name of the person whom you married in 1942?

A. (Through the interpreter): Ryozo Sawa.

Q. Was he a Japanese citizen?

A. (Through the interpreter): Yes.

The Court: Was he a soldier?

The Witness: (Through the interpreter): No.

The Court: Was he killed during the war?

The Witness: (Through the interpreter): He died from sickness.

Q. (By Mr. Belcher): What was his occupation?

A. (Through the interpreter): Farming, testing ground or examination of ground.

The Court: An experimental ground farmer?

The Interpreter: It could be that.

The Court: Anyway, he was a farmer?

The Interpreter: Yes. [44]

The Court: And you were a farmer's wife?

The Witness: (Through the interpreter): No, not a farmer. He was sort of an engineer.

Mr. Wirin: High class farmer.

(Testimony of Mariko Kuniyuki.)

Q. (By Mr. Belcher): I understood her to say on her direct-examination that she was working in the office of the United States Army Intelligence. What was she doing there?

A. (Through the interpreter): As a house-keeper.

Q. Was that for the officers personally or for the Government of the United States?

A. (Through the interpreter): I believe I was working for the American Government.

Q. What made you believe that?

A. (Through the interpreter): I thought, since I was working for an American officer, I thought I was working for the American Government.

The Court: How did you get paid?

The Witness: (Through the interpreter): At first, I was getting from the Military Government and then, afterward, it was changed to CIC.

The Court: In yen?

The Witness: Yes.

The Interpreter: Yes.

The Court: Or by check? [45]

The Witness: (Through the interpreter): In cash.

The Witness: In cash.

Q. (By Mr. Belcher): Never at any time did you receive any checks?

A. (Through the interpreter): No.

Q. By whom were you hired?

A. (Through the interpreter): Major Voght.

(Testimony of Mariko Kuniyuki.)

Q. You never at any time received any paper from the United States Army showing you were a member of the armed forces?

Mr. Wirin: Your Honor, there is no claim she was a member of the armed forces,—employed by the Military Government or the CIC. If you will accept my claim that we don't make that claim, that is sufficient. But we do not claim she was a member of the armed forces.

Mr. Belcher: Do you admit she was an employee of these officers, then?

Mr. Wirin: No.

Mr. Belcher: I think I am entitled to go ahead, then.

The Court: Objection overruled.

A. (Through the interpreter): I can't understand.

Q. (By Mr. Belcher): You didn't speak English very well, [46] did you?

A. (Through the interpreter): No.

Q. Were you contacted by the Major who offered you the position or did you go and solicit it?

A. (Through the interpreter): I heard through my friend that the Major was looking for somebody to take care of his baby and I applied for the job.

Q. Did you use an interpreter in applying for your job?

A. (Through the interpreter): Yes.

Q. After 1945 you had an opportunity to return to the United States, did you not?

The Interpreter: I beg your pardon?

(Testimony of Mariko Kuniyuki.)

Q. (By Mr. Belcher): I say after 1945 she had an opportunity to return to the United States?

A. (Through the interpreter): I lost my citizenship; therefore, I lost my opportunity.

Q. When did you first learn that you had lost your citizenship?

A. (Through the interpreter): 1947.

The Witness: 1947.

Q. (By Mr. Belcher): But between 1945 and 1947 you made no attempt to take up with the American Consul in Japan the matter of your returning to the United States, did you?

Mr. Wirin: Now, your Honor, I am going [47] to object to it on the ground that for some considerable time after 1945 there was no United States Consul in Japan. I am not certain that I know. I suppose it would be a matter of judicial knowledge when the Consulates were first opened.

I am advised, also,—perhaps this is a matter of judicial knowledge—there wasn't any transportation to the United States.

The Court: No, there wasn't any transportation. It wasn't available. They didn't have Consulates, as a matter of judicial notice. It is also a matter of judicial notice—although I don't know the day—that any civilian couldn't get out of Japan.

Mr. Wirin: My understanding was that it was 1947 before the Consulates were opened.

The Court: Those are matters of which the Court can take judicial knowledge. They are readily

(Testimony of Mariko Kuniyuki.)

ascertainable. I think there was also a directive which prohibited anybody from leaving Japan.

The Interpreter: Am I supposed to ask this question?

The Court: The objection is overruled. Ask the question.

A. (Through the interpreter): By the air raid we lost our home and we practically lost everything; therefore we [48] were busy re-establishing ourselves. I never thought an American Consul was open or at that time had any idea I could return to the United States.

Q. (By Mr. Belcher): Did you consider that you had dual citizenship?

A. (Through the interpreter): I knew I had a dual citizenship.

Q. (By Mr. Belcher): When if at all did you make any registration with the Japanese Consul?

The Interpreter: She is asking when,—the first time she went to the Consul?

The Court: No; the Japanese Consul. Did she ever at any time go and register with the Japanese Consul as an American citizen?

A. (Through the interpreter): No, I haven't.

The Court: Do you know whether or not your parents did or your grandmother or your aunt or anybody on your behalf while you were a child?

The Witness: (Through the interpreter): Through my father, when I was a child, my father registered at the Japanese Consul located in Seattle. It is recorded in the family book.

(Testimony of Mariko Kuniyuki.)

Q. (By Mr. Belcher): When you came back for the first time in 1940, did anybody accompany you?

A. (Through the interpreter): Yes. I came back with my [49] friends. One was Sizuko Sazara and Mr. Moro.

Q. And how long did you stay with your parents in Seattle on that occasion?

A. (Through the interpreter): Eight months.

Q. Do you remember the month that you returned to Japan in 1941? A. August.

Q. Was that because, you say, you received a letter from your aunt?

A. (Through the interpreter): Yes.

Q. Do you have that letter?

A. (Through the interpreter): No, I don't have it.

Q. Do you remember what was in the letter?

A. (Through the interpreter): I don't remember.

Q. Do you recall whether or not there was anything in that letter about possible war between the United States and Japan?

A. (Through the interpreter): I don't think so. The aunt just wanted to see me.

Q. You taught in the first and second grades of the Japanese school between 1935 and 1940, is that correct?

A. (Through the interpreter): Yes.

Q. How did you get that job?

A. (Through the interpreter): After graduat-

(Testimony of Mariko Kuniyuki.)

ing from the Normal school, the position is decided by the school. [50]

Q. Do you make a contract with the school for your employment?

A. (Through the interpreter): I was requested from the principal of a certain school to take the position at that school.

Q. That doesn't answer the question.

The Court: Does she understand what is meant by the word "contract"?

Q. (By Mr. Belcher): Was there any paper that you signed when you took that employment?

A. (Through the interpreter): No, there isn't any contract.

Q. Did you make it known to the principal of the school that you were an American citizen at the time that you took that employment?

A. (Through the interpreter): Yes, I did. I told him that I was born in the United States.

Q. Did you tell him that you still claimed your American citizenship?

A. (Through the interpreter): Yes.

Q. Is it not true that you have to be a citizen of Japan before you can teach in their public schools?

Mr. Wirin: That is objected to as calling for a conclusion.

The Court: What is the difference? She [51] was a citizen of Japan under the Japanese law. She was a citizen of Japan, no matter where she was born. That is a matter of which the courts take

(Testimony of Mariko Kuniyuki.)

judicial notice and recognize repeatedly in decisions.

Mr. Wirin: This question calls for a conclusion.

The Court: Objection sustained.

Q. (By Mr. Belcher): Did you discuss with any of your American friends who were not Japanese citizens in Japan the matter of your voting in these elections?

A. (Through the interpreter): Concerning the typical Japanese friend of the American born?

Q. I was speaking of the Japanese.

The Interpreter: Typical Japanese?

Mr. Belcher: Yes.

A. (Through the interpreter): Not especially.

The Court: Did you discuss it with your aunt?

The Witness (Through the interpreter): They accented that since we women had a right to vote that we should vote. That is about all I talked about it.

The Court: Everyone was talking to everyone else concerning the women voting?

The Witness (Through the interpreter): Yes.

Q. (By Mr. Belcher): Women had not been permitted to vote before that time?

A. (Through the interpreter): No, they [52] wasn't.

The Court: We will recess until 2:00 o'clock. I think I should advise Counsel that tomorrow the Court will be closed out of respect to the memory of Judge Black because that is the day of the funeral.

(Testimony of Mariko Kuniyuki.)

(There was some discussion off the record.)

The Court: We will recess until 2:00 o'clock.

(At 12:00 o'clock, noon, Thursday, August 24, 1950, proceedings recessed until 2:00 o'clock p.m. in the United States Court House, Seattle, Washington.)

August 24, 1950—2:00 o'Clock P.M.

(Same parties present as before.)

Mr. Belcher: I will make it as brief as I can, your Honor.

MARIKO KUNIYUKI

resumed.

Cross-Examination
(Continuing)

By Mr. Belcher:

Q. You were approximately 24 years old in October of 1940, or in the year 1940 when you returned from Japan?

A. (Through the Interpreter): Yes.

Q. And you had lived in Japan, up to that time, continuously from the time that you were three years of age?

A. (Through the Interpreter): Yes.

Q. You have had no opportunity, in the time that you have spent in the United States, since you left here in 1918, to become familiar with the American customs at all, have you?

(Testimony of Mariko Kuniyuki.)

A. (Through the Interpreter): No.

Q. Now, when you voted in the elections in 1946 in Japan, [54] if it was not your intention to remain in Japan, why were you sufficiently interested to vote in their local elections?

Mr. Wirin: We object to the question in the form it is put on the ground it is compound and even argumentative.

The Court: Yes, it is pretty argumentative even for cross-examination, Counsel. Objection sustained.

Why did you vote in the local elections?

The Witness (Through the Interpreter): Because the occupational forces emphasized to vote.

Q. (By Mr. Belcher): Was that appeal made to the Japanese people or to the Americans?

Mr. Wirin: That is objected to as not clear. Americans were also Japanese people. Some Japanese people were also Americans because they were born here in the United States. Some were Japanese because they were from Japanese descent and also because they were Japanese citizens. It seems to me it is an argumentative question and assumes something not in evidence, namely, that one could not be an American citizen and at the same time be a Japanese.

The Court: Oh, she can answer. The objection is overruled. I don't know whether she can understand [55] it.

You may say to the witness that if she does not understand the question she may say so.

(Testimony of Mariko Kuniyuki.)

A. (Through the Interpreter): I cannot understand the question.

Q. (By Mr. Belcher): Did you hear the appeal that was made by radio to vote?

A. (Through the Interpreter): Yes, by the radio and by the newspapers.

Q. And in the appeal that was made by radio, state whether or not you heard the announcer state whether the appeal was made to Japanese only?

Mr. Wirin: We object to that as not clear. Does the question mean Japanese citizens, only?

Mr. Belcher: Yes.

The Court: Overruled.

A. (Through the Interpreter): Yes, for the Japanese.

Q. (By Mr. Belcher): There was nothing said in any of that radio propaganda that you heard that appealed to Japanese of American birth to vote in those elections, was there?

A. (Through the Interpreter): No, I didn't hear anything like that.

Q. So that, at the time you voted, you did so as a Japanese citizen, did you not? [56]

A. (Through the Interpreter): My parents were in America and I have American citizenship but, according to General MacArthur, his instructions were that everybody in Japan should vote; therefore, I thought it was my duty to vote.

The Court: All Japanese?

The Witness (Through the Interpreter): Everybody in Japan.

(Testimony of Mariko Kuniyuki.)

Mr. Wirin: She said everybody.

Q. (By Mr. Belcher): Were there other people in Japan during the war or shortly after the war other than Japanese or Japanese by American birth?

The Court: If you know.

Q. (By Mr. Belcher, continuing): If you know.

A. (Through the Interpreter): I don't know.

Q. At the time you voted, did you vote as a Japanese citizen?

A. (Through the Interpreter): At that time, I believed I was an American citizen, but I was living in Japan, at that time, so I voted.

Q. Did you report to the election official that you were born in the United States at the time you voted?

A. (Through the Interpreter): They didn't ask me, so therefore I didn't say anything.

Q. You did not make known to the Japanese officials in [57] charge of the elections, before you cast your ballot, that you were an American-born citizen?

Mr. Wirin: I object to the question as having been asked and answered.

The Court: Sustained.

Q. (By Mr. Belcher): Did you discuss with any of the Japanese officials, prior to the time that you cast your ballot in these elections, that you were and American born citizen?

A. (Through the Interpreter): What sort of a conversation, she would like to know.

(Testimony of Mariko Kuniyuki.)

Q. Anything,—any conversation.

A. (Through the Interpreter): No, I have not.

Q. In voting, you were interested in the welfare of Japan, were you not?

A. (Through the Interpreter): Since the occupational forces occupied Japan, I believe the voting concerned helping Japan. Therefore, my intention of voting at that time was to help the occupational forces.

Q. Did you know that the occupational forces represented eleven nations?

A. (Through the Interpreter): I thought it was only America.

Q. You never had heard in Japan that General MacArthur was acting for eleven nations? [58]

A. (Through the Interpreter): Maybe I heard about it, but perhaps I have forgotten.

Q. Do you know whether or not you did hear about it prior to the elections?

A. (Through the Interpreter): I don't remember, exactly.

Q. You were in Japan during the hostilities?

A. (Through the Interpreter): Yes.

Q. Do you know what became of the American citizens who were found in Japan during the time of the war?

Mr. Wirin: That is objected to.

Mr. Belcher: If she knows.

The Court: All of them or some of them?

Mr. Wirin: She knows what happened to her.

(Testimony of Mariko Kuniyuki.)

Mr. Belcher: Well, any American citizens that were in Japan?

Mr. Wirin: She was one of them, sir. She was in Japan, at the time.

The Court: I don't know that she would know what happened to all of them.

Mr. Belcher: Any of them.

The Court: Oh, any of them. I was in Japan during the war. Maybe I can take judicial notice of it. Some American citizens were bothered and some of them not at all.

Mr. Belcher: During the war? [59]

The Court: During the war.

Mr. Wirin: It is our position that she is one of them.

The Court: Were you interned during the war?

The Witness (through the interpreter): No.

Q. (By Mr. Belcher): Did you make known to any of the Japanese officials that you were an American citizen?

A. (Through the Interpreter): They didn't ask me, so I didn't give them the notice.

Mr. Belcher: Oh, I think that is all.

The Court: Re-direct?

Mr. Wirin: Yes, your Honor.

Re-direct Examination

By Mr. Wirin:

Q. You testified that when you were a child your name was registered by your father at the Office of

(Testimony of Mariko Kuniyuki.)

the Japanese Consul in Seattle. How long after your birth or how soon after your birth, if you know, was your name so registered, according to your information?

Mr. Belcher: That is objected to, if your Honor please.

The Court: If she knows.

Mr. Belcher: The parents are here and I think it is—— [60]

The Court: Well, you can produce that by direct.

Mr. Wirin: She was asked about it on cross-examination, some evidence about that.

The Court: Overruled. "If you know." Ask her the question, if she knows?

The Interpreter: Will you repeat that question?

Q. (By Mr. Wirin): Do you know when, after your birth, your name was registered by your parents at the Office of the Japanese Consul in Seattle?

A. (Through the Interpreter): In Japanese family book it was about 10 days after my birth.

Q. You have testified about the occupation forces in Japan. Did you, at any time, while you were voting, see any United States soldiers at a polling booth?

A. (Through the Interpreter): Yes, I saw him.

Q. What was he doing?

A. (Through the Interpreter): I don't know what they were doing, but I saw them coming into the place.

The Court: He translated it as "American soldier."

(Testimony of Mariko Kuniyuki.)

Q. (By Mr. Wirin): Did you see American soldiers in Japan?

A. (Through the Interpreter): I don't remember exactly, but I believe there was one with an interpreter.

Q. You testified on direct examination and I think also on cross-examination about General MacArthur. Who, [61] to your understanding, was General MacArthur?

A. (Through the Interpreter): I believe he is the person as brought peace in Japan.

Q. General MacArthur, as you know, was not in Japan before the end of the war; you know that, don't you?

A. (Through the Interpreter): Yes.

Q. What is your understanding as to whom, if anyone, General MacArthur represents,—as to what he was doing in Japan?

A. (Through the Interpreter): President Truman.

Q. What about President Truman?

The Court: You said who does he represent. "He represents President Truman."

Mr. Wirin: That concludes my re-direct.

The Court: Step down.

(Witness excused.)

The Court: Next witness.

Mr. Wirin: The Plaintiff has no additional oral testimony, but has additional documentary evidence. I have shown these documents and in most instances

have furnished copies of the documents to Counsel.

The Court: The parents of the Plaintiff are in the courtroom?

Mr. Wirin: Yes. [62]

The Court: If there is a witness who could be called and is not an inference must be drawn against her testimony.

Mr. Wirin: Her testimony is that she was registered.

The Court: She was 10 days old. How does she know whether she was registered or not?

Mr. Wirin: The point is we make no claim about that, one way or the other. But I think we will call the parents.

The Court: It isn't my case. You may do as you like.

Mr. Wirin: Then I will do as I originally had intended. The father is available and you may call him for any purpose. I don't think it is necessary to the Plaintiff's case. But there are some documents which I think are material to the Plaintiff's case.

The Court: All right.

Mr. Wirin: I would like to offer, next in order, the document entitled "Extracts from Official Report, Supreme Commander for the Allied Powers, entitled 'Summation of Non-Military Activities in Japan and Korea,' April, 1946, No. 7, Published, Tokyo, by S. C. A. P.,"—Supreme Commander for the Allied Powers. [63]

I have shown this document to Counsel and have given him a copy. The entire document, namely, a report is a document published by the Supreme Commander of the Allied Powers, which it is my opinion is a document of which the Court may take judicial notice. I am offering the document in evidence pertaining to the elections.

Mr. Belcher: I am making no objections, if your Honor please, that the documents are not authenticated or certified. Counsel has given me his word they are what they purport to be. I make no objection to the documents that they are not certified, but I do object as to the materiality.

Mr. Wirin: Then I will address myself as to the materiality.

The Court: Overruled.

(Document entitled "Extracts from Official Report, Supreme Commander for the Allied Powers, entitled 'Summation of Non-Military Activities in Japan and Korea,' April, 1946, No. 7, Published, Tokyo, by S. C. A. P.," was marked as Plaintiff's Exhibit 5 for identification.)

The Court: In evidence?

Mr. Wirin: We offer it in evidence.

The Court: It is in evidence. [64]

(Plaintiff's Exhibit 5 received in evidence.)

Mr. Wirin: The next document which I offer in evidence is a document entitled "Extracts from Offi-

cial Report, Supreme Commander for the Allied Powers, entitled 'Summation of Non-Military Activities in Japan and Korea,' November, 1945, No. 2, Published, Tokyo, by S. C. A. P."

The particular Extract is entitled "Encouragement of Women's and Youths' Organizations."

(Document entitled "Extracts from Official Report, Supreme Commander for the Allied Powers, entitled 'Summation of Non-Military Activities in Japan and Korea,' November, 1945, No. 2, Published, Tokyo, by S. C. A. P.," marked as Plaintiff's Exhibit number 6 for identification.)

Mr. Belcher: The same objection.

The Court: The same ruling. In evidence as Plaintiff's Exhibit number 6.

(Plaintiff's Exhibit number 6 received in evidence.)

Mr. Wirin: Now, I would like to ask the Court to take judicial notice of the following fact,—and then I have a document in connection with it.

The fact that I asked the Court to take [65] judicial notice of is that United States Consuls in Japan are in the Office of the United States Political Advisor to the Supreme Commander and for the Allied Powers.

As I say, I will ask the Court to take judicial notice of it. I have a document, here, which is certified as being a document in the files of the State

Department. It happens to be a document, not in this case, but in another case. I would like to offer a portion of that document in evidence or read into evidence the portion of the document which would have relevancy in this case. It pertains only to the fact with respect to which I asked the Court to take judicial notice, and reads as follows:

“The Foreign Service of the United States of America. Yokohama Branch, Office of United States Political Advisor, Yokohama, Japan.”

I have shown this to Counsel. I must admit to the Court that I didn't know how to handle this matter. I could offer it in evidence. If I offer it in evidence, it is only to acquaint the Court with the fact, which fact I am asking the Court to take judicial notice of. My understanding is that, when the Court is requested to take judicial notice, a matter is called to the attention of the Court of sufficient authenticity.

The Court: Well, let's see what you have [66] got there?

Mr. Wirin: The first document is just the certificate. The other is just the caption of the document from which we expect to argue that the United States Consuls in Japan aren't in a foreign country representing the United States, but are part of, primarily, the Office of Political Advisor. Your Honor will notice, there, the heading “Office of Political Advisor.”

Mr. Belcher: I can't see the materiality, if your Honor please. If Counsel wants me to stipulate that there was such an office, I am glad to do so.

The Court: Yokohama Office of United States Political Advisor?

Mr. Wirin: That is right. If Counsel will stipulate that the United States Consuls in Japan are in the Office of the United States Political Advisor to the Supreme Commander for the Allied Powers. In other words, there is a department or section in S. C. A. P. known as the Office of Political Advisor, the same as there is a Civilian Affairs Division, and that is the import of that document.

The Court: I think that I can take judicial notice of this fact,—that no Ambassador or Minister of the United States is in Japan, as such, but [67] the Office formerly known as Ambassador or Minister to Japan is now maintained within the State Department as the Political Advisor to the Supreme Commander for the Allied Powers and that all functions of the State Department and all employees of the State Department serving Japan are subservient to and operate under the Office of Political Advisor to the Supreme Commander of the Allied Powers through the State Department, and that the United States speaks to the Supreme Commander for the Allied Powers through the President of the United States who acts, in turn, on behalf of the Committee consisting of Representatives of the State Department, the Army Department and the Navy.

Mr. Wirin: I ask the Court to take judicial notice of that fact.

There is one other matter that I ask the Court to take judicial notice of.

The Court: I can take judicial notice of this fact,—that General MacArthur is the Supreme Commander of the Allied Powers; that the United States was designated as the Occupying Force of the Occupied Country consisting of Japan and their four subsidiary islands only; that the remainder of the territory has been distributed under trusteeships or [68] under arrangements concerning which there now seems to be considerable question, especially in Korea.

Mr. Wirin: There are one or two other matters and then the Plaintiff's case is in.

I would like the Court to take judicial notice that in March, 1950, the Japanese Government—

The Court: Excuse me just a moment. I will further take judicial notice that the United States is paying the cost of occupation of Japan.

Mr. Wirin: The next matter, your Honor, is this: That in March, 1950, the Japanese Government was permitted to send representatives to the United States for the purpose, in certain communities, like San Francisco, Los Angeles and Honolulu of having those representatives represent the Japanese Government with respect to problems involving commercial matters and trading matters affecting citizens of the United States and Japan, but that at the time of such permission to have such repre-

representatives in Japan was given, by public announcement by the Supreme Commander for the Allied Powers, these representatives were to have no diplomatic or consulate rank and would not be extended any diplomatic immunities, and they are required to register as aliens, the same as any other person in the United States who is an alien resident [69] of the United States, as distinguished from a citizen resident of the United States.

I happen to have in my hand an Associated Press dispatch——

The Court: I don't know what particular difference that makes, Counsel.

Mr. Wirin: I think, your Honor, it will make this difference in view of the argument which I anticipate will be made, namely, that Japan was a foreign state and was a foreign state at this time.

The Court: The question is not what is Japan today, but what was it in 1946 and 1947?

Mr. Wirin: Prior to 1950——

The Court: Well, whatever it was in 1946 and '47 it still is, because S. C. A.P. is still operated; Japan is still an occupied country; there has been no treaty made with Japan.

I will rest, at this time.

The Court: What was the document?

Mr. Wirin: It was a document——

The Court: What was it about?

Mr. Wirin: It was the last report of the United States Secretary of Defense,—the last semi-annual

report. In it was a section pertaining to occupied areas. The occupied areas which were listed [70] included Germany, other places, and Japan. In it there is the statement by the Secretary of Defense substantially as follows—this is a report as of the end of 1949—as of December, 1949—that General MacArthur was in Japan in two capacities, one as a representative of eleven nations, including Russia, and the other as a representative of the United States in charge of the occupation forces. It is a matter of which I believe the Court can take judicial notice. The document itself is a public document, published by the United States Government and by the Secretary of Defense.

The Court: I think so.

Mr. Wirin: That concludes the Plaintiff's case.

DEFENDANT'S CASE

Mr. Belcher: Will you mark this, please?

(Document consisting of three sheets entitled "United States of America, Department of State, No. 4899," marked as Defendant's Exhibit B for identification.)

The Court: That is a certified copy of documents, is it? [71]

Mr. Belcher: Yes.

The Court: What is your objection?

Mr. Wirin: Some of the documents, in the first place, don't have any relation to this case at all,—particularly the latter documents which consist of

correspondence between government agencies concerning another case.

Perhaps I might specify the documents I don't object to. I don't object to the photostated documents. I think the first one is a copy or a photostat of the denial of the ruling that the Plaintiff has lost her citizenship. I have no objection to that as representing the position of the State Department.

The next document is signed by the Plaintiff and I have no objection to that. It has been read into evidence.

Now, the documents following constitute intra or inter-departmental correspondence and communications in the first place, none of it bearing upon or relating to this case.

The Court: A letter of July 17, 1950, relates to another case entirely.

Mr. Wirin: It is a decision which I think is an unjust one of a decision by Judge Metzger, in which he made such a ruling in that case. [72]

The Court: He apparently made them against the Department because he said the Judge's findings are erroneous and, naturally, everybody who loses thinks the Judges are in error.

Mr. Wirin: In that instance government agencies are no different than private litigants.

The Court: I have found that out.

Mr. Wirin: The next document——

The Court: In 1899 President McKinley recognized Japan as an independent nation. There isn't any doubt that, before the Instrument of Surrender, Japan was an independent nation.

Do you have any objection?

Mr. Belcher: It goes right to the meat of this case.

The Court: All it is is an argument by the State Department that the judges have been wrong.

Mr. Belcher: I disagree with that. I think it constitutes a ruling by the only ruling power that has a right to determine the political question involved. I propose to cite United States Supreme Court decisions to bear that out.

The Court: I can't see how this letter of July 17, 1950, concerning Hatsuye Ouye—however the name is pronounced—which is simply a critique number [73] by number, of the judge's position. It sets forth their position. I can't see how it has anything to do with this. It is pure argument and it isn't a bit different than whoever signed this letter—Mr. Shipley—whether he is a member of the Bar or not should get up here in Court and make an argument that he is right and Judge Metzger was wrong.

Mr. Belcher: I am in this position, your Honor, with regard to that.

The Court: And the same is true as to this mimeographed letter of May 4, 1950. It doesn't relate to this case. It doesn't show any official action by any department of the United States in connection with this case. And the letter attached to the top, August 22nd, 1950, is merely an inter-departmental letter and shows no official action at all.

Mr. Belcher: May I explain, if your Honor please, that in these 503 cases the suit is brought while the Plaintiff is in Japan. Not until a copy of that complaint is sent to Japan and a request made for a permit to travel to the United States for the purpose of appearing as a witness in his own behalf does the Plaintiff get to the United States.

The Court: There isn't anything in here about permission to travel to the United States. [74]

Mr. Belcher: I realize that, your Honor. I did not receive that document until this morning, in this morning's mail. And your Honor will notice that while the copy of the letter is addressed to the Assistant Attorney General, the memorandum on the top indicates that instead of going through the Attorney General's Office it was mailed direct to us, so in response to my teletype as to the day I learned this case was definitely set for trial, in view of the fact the Plaintiff had arrived in the United States, Mr. Wirin was anxious to have an early hearing. I discussed the matter of Mr. Wirin's request with Judge Black on Friday before his unfortunate demise. He asked me to come before him on Monday morning with Mr. Mambu, local counsel, for the purpose of having the case set down for trial.

We don't ordinarily receive anything from the Secretary of State until perhaps a week or so before the trial. This was gotten up so hurriedly, apparently not having passed through the Attorney General's Office, it came direct from the State De-

partment as your Honor will notice from the memorandum on top. It catches me in the position that I am not able to produce the very thing that I asked the Attorney General to send me which was the ruling in this particular case,—the [75] ruling by the Secretary of State that Japan is a foreign state, was a foreign state, and has been a foreign state at all times since the occupation.

I have set it out in my brief, your Honor, and I have a copy. It isn't certified.

The Court: Very well. We will get to that. But confining ourselves to this exhibit, the objection to everything except the certificate of the Department of State, the attached signed and photostated document signed by Richard H. Lamb, and the affidavit of the Plaintiff here will be sustained.

The Clerk will detach these documents and mark them for identification, separately. The objection is sustained to the carbon of a letter dated August 22, 1950, typewritten with the signature of "Willis H. Young"; the letter dated July 17, 1950, and the mimeographed sheet dated May 4, 1950.

The things introduced will be marked for identification as Exhibit A. Those to which objection has been sustained will be marked as Defendant's Exhibit B for identification only.

(Documents, carbon copy of a letter dated August 22nd, 1950, signed by Willis H. Young, and carbon copy of a letter dated July 17, 1950, signed by R. B. Shipley, and mimeographed sheet dated May 4, 1950, marked as Defend-

ant's Exhibit A and [76] marked as rejected from evidence.)

Mr. Belcher: On the theory that correspondence exchanged in the ordinary course of business, where it is pertinent to the issues involved, is admissible in evidence, I now desire to have marked for identification and offer in evidence a letter signed "James M. McNerny," Assistant Attorney General, addressed to the Honorable J. Charles Dennis, United States Attorney, in connection with this particular case on trial.

The Court: Have you seen the document, Mr. Wirin?

Mr. Wirin: I have seen it. I have some objections to it.

Mr. Belcher: This letter dated June 13, 1949, is the one that contains the ruling of the State Department that Japan is a foreign state.

The Court: For all purposes?

Mr. Belcher: Yes.

The Court: That is a pretty broad ruling.

Mr. Belcher: Of course, it is a long opinion, your Honor. It really had to do with the Arikawa case.

Mr. Wirin: That is the trouble. That is my [77] objection. In the first place, I stated to Mr. Belcher that I was going to object to these documents, but my objection is not on the ground that these documents are not duly certified. He thought that he should have gotten them certified and that the process of the trial prevented that. I make no point about that at all. I am going to assume, for the

purpose of my objection, that these documents are certified and have all of the necessary seals of government agencies to demonstrate that they are true documents.

My objection to these documents is that none of them is a document to the effect that Japan is a foreign state. None of them is a ruling by the State Department or by the Department of Justice that Japan is a foreign state either generally or in connection with the problem involved in this case, namely, under conditions of the Nationality Code of 1950, Sections 903 and 801 which deal with loss of citizenship.

Now, specifically, these documents consist of a statement made on June 3, 1949, from one department to another, namely, the State Department to the Department of Justice, urging the Department of Justice to take an appeal in the case of Arikawa against Acheson. They recite that the Solicitor General had [78] refused to take an appeal in the Arikawa case.

This is a letter from the State Department urging the Solicitor General to change his position. So here you have an inter-departmental communication from one agency of the government to another,—between the client and the lawyer. In this case the lawyer happens to be the highest attorney in the United States and can determine in what cases to take appeals regardless of what his clients request.

If this was a rule that Japan was or was not a state, I think it might be admissible for what it is worth. But these documents do not reach the

dignity of a ruling by the State Department or otherwise that Japan is a foreign country.

This document contains a criticism of the Arikawa decision and urges that an appeal be taken.

Originally, in the Arikawa case, the United States Attorney at Seattle, through Mr. Kelleher and Mr. Martin, who tried the case, recommended that an appeal be taken and a notice of appeal was filed and thus the appeal was taken. Thereafter, the Department of Justice instructed the United States Attorney to dismiss the appeal and a formal motion to dismiss the appeal was filed and was granted.

This letter of June 3, 1949, recites, "The [79] Department"—that is the State Department—"agrees with the United States Attorney in Los Angeles that an appeal should be taken from the judgment of the Court, at least in so far as it holds that Japan is not a foreign State for the purposes of Section 401-E of the Nationality Act of California."

What I am saying to your Honor is—perhaps to repeat—that this letter is not a ruling or decision or public statement announced by any Department of the United States. It is a communication from one department to another.

The Court: It is an argument.

Mr. Wirin: It is an argument.

Mr. Belcher: Counsel is merely arguing one phase of it, your Honor. The letter is what I asked the Attorney General to certify and have sent here this morning and was what I thought I had received.

The Secretary of State, through his Legal De-

partment, said this—and I think your Honor perhaps will find it down near the bottom of the opinion——

The Court: Well, the big argument, here, I can see,—I have never seen this before but I see what they are arguing about is that decision in Judge Cavanaugh's decision that MacArthur was occupying [80] Japan for the United States. I do not go along with that finding in Judge Cavanaugh's opinion. General MacArthur, as Supreme Commander of the Allied Powers, was occupying Japan for the Allied Powers, at one and the same time as the Commander of the United States forces and for the President of the United States.

Mr. Belcher: I found myself in this position, your Honor——

The Court: This is just argument. If you want to get it before me you can copy it in your brief.

Mr. Belcher: That portion of it is copied, commencing with "On the specific question."

The Court: The objection to it is sustained on the ground that it is incompetent, irrelevant and immaterial and of no probative value whatever other than the State Department disagrees with the decision of Judge Cavanaugh.

Mr. Belcher: May it be marked for identification, your Honor?

(Documents referred to, consisting of 11 sheets, the first of which is signed by James M. McInerny and dated June 12, 1950, were marked as Defendant's Exhibit C for identification and marked as rejected.)

Mr. Belcher: The Government rests.

The Court: The Defendant rests? [81]

Mr. Belcher: Yes, your Honor.

Mr. Wirin: The Plaintiff has no further evidence.

The Court: I have read, I think, most of the cases that have been cited by Counsel.

Mr. Belcher: I might call your Honor's attention to the further case in 335 U. S. which cites with approval the language used in 137 U. S. where the Supreme Court of the United States definitely held that the question of the status of another country was a political question, the determination of which rested exclusively in the Executive and Legislative Departments of the Government and that the Judiciary was bound by that ruling.

The Court: Is it in your brief?

Mr. Belcher: No, it isn't in the brief, your Honor.

Mr. Wirin: Page 337, Brown Company versus Cornell.

The Court: What is the other case you say that refers to?

Mr. Wirin: That is in the brief. 137 is in the brief.

The Court: 137 U. S. what?

Mr. Mambu: 202, I believe, your Honor. [82]

Mr. Belcher: It is on page 6 of my brief, your Honor, 137 U. S. 202. Alco Ochin versus Central Leather Company, 246 U. S. 297. I just desire to submit this additional authority which is more recent.

Mr. Wirin: I have in my possession a short memorandum which was filed in the Arikawa case entitled "Plaintiff's memorandum on nature of occupation of Japan and Japanese elections," and which consists of extracts largely of the book.

I would like to hand it to your Honor on the ground it contains in summary form the highlights of that document upon which the Plaintiff relies in this case as the Plaintiff did in the Arikawa case. If there is no objection I will give it to your Honor for what it is worth.

The Court: I can look at the book, here. We will have a recess and I will examine some of these things. How long do you wish to argue?

Mr. Belcher: I am not given to very long arguments if your Honor please. Perhaps that is why I am not quite as successful as I should be. But I don't believe in long arguments. I don't think in talking to any Court that you have to draw a picture, always.

The Court: Well, never take anything for [83] granted with me. I mean just assume that I don't know anything. Start from zero.

Mr. Belcher: Very well.

The Court: I will say that I have, except for these three books, here, familiarized myself and read the cases that have been cited by Counsel, particularly if it appeared from the briefs that they were appropriate to the questions involved.

Mr. Belcher: I don't think I will require more than half an hour.

Mr. Wirin: I had intended to spend most of my

argument in analyzing the occupation of Japan. I didn't expect your Honor to read, just off the cuff, 173 pages. So I don't know how long my argument will take. But it will be largely with respect to the showing we have made in this case.

The Court: Is there anything in this book that shows the rejection by the Supreme Commander of the Allied Powers of some of the candidates that were elected?

Mr. Wirin: Yes. That is a good question. I will try to find it quickly.

The Court: Is there anything in the book that shows how the Constitution was promulgated?

Mr. Wirin: Yes. [84]

The Court: And that shows the Supreme Commander's approval of it?

Mr. Wirin: Yes.

The Court: Where is that?

Mr. Belcher: I think it was after the adoption of the Constitution, if your Honor please, and before the elections.

The Court: Here is Appendix 18, Japanese Bill of Rights. That is a directive issued by the Commander and that directs the Japanese Government to do so and so.

Mr. Belcher: "Abolition of certain political parties, societies and other organizations,"—at page 112 of Exhibit number 2.

Mr. Wirin: As a matter of fact, to answer your Honor's questions summarily, at this time, without going into details. A thumbing through of the Appendix and various documents gives almost a

blow by blow account of the matters that your Honor has been referring to. It probably starts somewhere about Appendix 21.

The Court: The thing I want to find, here, is his disapproval of certain candidates who were elected.

Mr. Wirin: Oh. I misled the Court and misstated my answer to the Court's question. [85]

The Court: Is there approval, here, of the candidates that were elected?

Mr. Wirin: Yes.

The Court: Where is that?

Mr. Wirin: All right; okay.

Mr. Belcher: There is in Appendix A, at page 116, a list of organizations to be abolished.

The Court: I have found it here,—page 140, statement by General MacArthur, April 25th, "I have approved the accompanying report of the chief government section on the Japanese national election conducted on April 10, 1946."

I will examine the book. I know what I want to look for.

Mr. Wirin: Your Honor asked me a question. On page 143—this is the election statement of General MacArthur after the election, page 143—"On the contrary, it was noted that the records of all candidates would be submitted to SCAP review." Somewhere above that there is a description of the nature of the supervision which General MacArthur's Headquarters had over the elections and all of the polling booths. A system of supervision was set up by troops which would insure immediate dis-

closure of any irregularities. The Military-Government Units supervised [86] the surveillance of the elections by tactical units and CIC units.

90 percent of urban and 40 percent of all rural polls were inspected on election day by the occupation forces. "This inspection," said General MacArthur, "was not merely a cursory examination but included a check to ascertain that all candidates were listed as required and inspected to determine whether any coercion or solicitation existed at the polls."

Somewhere in here, and I will have it ready for you upon your return, there is a statement of the result of the purge lists, and the purge directives and orders which General MacArthur issued. Nine-tenths of all candidates were enjoined from public office. I don't know that it is in that report but it is in this document.

Mr. Belcher: I did want to make one further offer.

(Carbon copy of a document entitled "Department of State" and dated May 6, 1949, marked as Defendant's Exhibit D for identification.)

Mr. Wirin: I am not going to object to that.

Mr. Belcher: It is not certified but I take it Counsel does not object to it on that ground.

Mr. Wirin: No,—nor on any ground. [87]

Mr. Belcher: It is a release for the press.

The Court: Received.

(Defendant's Exhibit D received in evidence.)

The Court: Who would like to convince me?

(Whereupon, argument was presented to the Court by Mr. Wirin.)

(Whereupon argument was presented to the Court by Mr. Belcher.)

Court's Oral Decision

[See pages 8 to 25 of this printed record.] [88]

* * *

(At 6:25 o'clock p.m., Thursday, August 24th, 1950, proceedings concluded in the United States District Court.) [109]

Certificate

I Hereby Certify that the foregoing and attached transcript of proceedings before the Honorable Peirson M. Hall, District Judge, in the District Court of the United States for the Western District of Washington, Northern Division, Case No. 2560, entitled Mariko Kuniyuki, Plaintiff, against Dean Acheson, as Secretary of State, Defendant, consisting of 109 pages including the Court's Decision, contains all of the testimony of witnesses, objections and exceptions of counsel together with rulings of the Court thereon, and all matters and things occurring during the hearing of said trial including the identification of exhibits, their receipt in evidence or rejection by the Court.

/s/ MERRITT G. DYER,
Court Reporter.

[Endorsed]: Filed December 7, 1950.

United States District Court Western District of
Washington Northern Division
No. 2560

MARIKO KUNIYUKI,

Plaintiff,

vs.

DEAN ACHESON, as Secretary of State of the
United States of America,

Defendant.

NOTICE OF APPEAL

Notice Is Hereby Given that defendant Dean Acheson, as Secretary of State of the United States of America, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered herein on the 15th day of September, 1950.

Dated this 10th day of November, 1950.

/s/ J. CHARLES DENNIS,
United States Attorney.

/s/ JOHN E. BELCHER,
Assistant United States
Attorney.

[Endorsed]: Filed Nov. 10, 1950.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 11 as Amended of the United States Court of Appeals for the Ninth Circuit, and Rule 75(o) of the Federal Rules of Civil Procedure, I am transmitting herewith all the original papers in the file dealing with the above entitled action, and that the same constitute the complete record on file in said cause. The papers herewith transmitted, including Plaintiff's Exhibits numbered 1 to 6 inclusive, and Defendant's Exhibits numbered A, B, C, and D, offered in evidence at the trial of said cause, constitute the record on appeal from the final judgment filed Sept. 15, 1950, and entered in Civil Docket Sept. 16, 1950, to the United States Court of Appeals at San Francisco, California, and are identified as follows:

1. Complaint, filed May 25, 1950.
2. Praecipe for process, filed May 25, 1950.
3. Marshal's Return on Summons, filed June 5, 1950.
4. Defendant's Memorandum, filed July 7, 1950.

5. Answer of Defendant, filed August 21, 1950.
6. Plaintiff's Trial Memorandum, filed August 23, 1950.
7. Court Reporter's Transcript of Court's Oral Decision, filed August 29, 1950.
8. Objections to Plaintiff's Proposed Findings of Fact, filed September 15, 1950.
9. Findings of Fact and Conclusions of Law, filed September 15, 1950.
10. Judgment for plaintiff, filed September 15, 1950.
11. Defendant's Notice of Appeal, filed November 10, 1950.
12. Designation of the Record on Appeal, filed November 10, 1950.
13. Statement of Points Relied Upon by Defendant, filed November 15, 1950.
14. Court Reporter's Transcript of Proceedings at Trial, filed December 7, 1950.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office for preparation of the record on appeal in this cause, to-wit:

Notice of Appeal\$5.00.

This amount has not been paid to me for the reason that the appeal is being prosecuted by the United States of America.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, this 13th day of December, 1950.

MILLARD P. THOMAS,
Clerk,

[Seal] By /s/ TRUMAN EGGER,
Chief Deputy.

[Endorsed]: No. 12772. United States Court of Appeals for the Ninth Circuit. Dean Acheson, as Secretary of State of the United States of America, Appellant, vs. Mariko Kuniyuki, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed December 15, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals
For the Ninth Circuit

No. 12772

DEAN ACHESON, as Secretary of State of the
United States of America,

Appellant,

vs.

MARIKO KUNIYUKI,

Respondent.

STATEMENT OF POINTS
ON APPEAL

The appellant, Dean Acheson, as Secretary of State of the United States of America, hereby formally adopts the statement of points on appeal heretofore filed in the District Court, which are as follows:

I.

The District Court erred in finding, concluding and adjudging that Japan is not a "foreign state" within the meaning of the Immigration and Naturalization code.

II.

The District Court erred in finding, concluding and adjudging that the plaintiff did not lose her American citizenship by voting in a Japanese election.

III.

The District Court erred in its finding III that plaintiff (respondent) "did not act freely and voluntarily in voting."

IV.

The District Court erred in its finding V in that the statements contained therein are not based upon any competent evidence and are wholly argumentative.

V.

The District Court erred in its conclusion of law numbered II to the effect that plaintiff (respondent) has not lost her United States citizenship because of her voting in the Japanese elections of 1946 and 1947.

VI.

The District Court erred in its conclusion of law numbered III, wherein it is concluded that plaintiff's (respondent) voting in the Japanese elections in 1946 and 1947 was not her free and voluntary act.

VII.

The District Court erred in its conclusion of law numbered IV, wherein it concluded that in 1946 and 1947 Japan was not a state within the meaning and intent of the Nationality Act of 1940, Sec. 401(e), 8 U.S.C. Sec. 801(e).

VIII.

The District Court erred in its conclusion of law numbered V to the effect that the elections held in Japan in 1946 and 1947 were not political elections within the meaning and intent of United States Nationality Code, Sec. 401(e) 801(e), 8 U.S. Code, Sec. 801(e).

IX.

The District Court erred in entering judgment decreeing plaintiff (respondent) to have not lost her American citizenship by so voting and that notwithstanding plaintiff's voting in Japanese elections she did not thereby lose her American citizenship.

/s/ J. CHARLES DENNIS,
United States Attorney.

/s/ JOHN E. BELCHER,
Assistant United States
Attorney.

[Endorsed]: Filed December 26, 1950.